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WHO: The Office of the Federal Register.

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

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

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WHEN: June 16; 9:00 a.m.
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Chicago, IL
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE83

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule that redefines the Devils Postpile National Monument (DPNM) portion of Madera County, California, from the Fresno, California, wage area to the Reno, Nevada, wage area. This change places the DPNM portion of Madera County in the wage area to which it is economically oriented.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Allan K. Summers, (202) 606-2848, or (FTS) 266-2848.

SUPPLEMENTARY INFORMATION: On January 27, 1992, OPM published proposed regulations (57 FR 3032) to redefine the DPNM portion of Madera County, California, from the Fresno, California, wage area to the Reno, Nevada, wage area. The proposed regulations provided a 30-day period for public comment. OPM received no comments and, therefore, is making the proposed change final.

Executive Order 12291, Federal Regulation

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

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for 5 CFR part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

Appendix C to Subpart B

2. In appendix C to subpart B, redesignate footnotes 15 through 26 as 17 through 28, respectively, and add the county of Madera, California, and footnote 16 to the wage area of Reno, Nevada, to read as follows:

Nevada

* * * * *

Reno

* * * * *

Area of Application. Survey area plus:

* * * * *

California:

* * * * *

Madera [16]

3. In appendix C to subpart B, redesignate footnotes 3 through 14 as 4 through 15, respectively, and add a new footnote 3 to the county of Madera, California, in the Fresno, California, wage area to read as follows:

Does not include Devils Postpile National Monument portion.

[FR Doc. 92-10805 Filed 5-7-92; 8:45 am]
BILLING CODE 6325-01-M

[16] Includes only the Devils Postpile National Monument portion.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority by the Secretary of Agriculture and General Officers of the Department

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and the General Officers of the Department to delegate the authority of the Secretary of Agriculture under Executive Order No. 12088 concerning compliance with environmental laws at Federal facilities.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas R. Fox, Office of the General Counsel, Research and Operations Division, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250-1400; telephone (202) 720-2320.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order No. 12088, October 13, 1978 (43 FR 47077), the head of each Executive agency must assure compliance with pollution control standards, including, but not limited to, those established pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*), the Federal Water Pollution Prevention and Control Act ("Clean Water Act"), as amended (33 U.S.C. 1251, *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*), the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*), and the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*).

Pursuant to section 1-601 of Executive Order No. 12088, whenever the Administrator of the United States Environmental Protection Agency (EPA) or an appropriate State, interstate, or local agency notifies an Executive agency that the agency is in violation of an applicable pollution control standard,

the head of the Executive agency must consult promptly with the notifying agency and provide, for the approval of the notifying agency, a plan and schedule to achieve and maintain compliance with the applicable pollution control standard. When the notifying agency is the EPA, the head of the Executive agency may enter into an inter-agency agreement, containing a plan and schedule to achieve and maintain compliance with the applicable pollution control standard at a Federal facility or with respect to an activity within the control of the agency. When the notifying agency is a State, interstate, or local agency, the head of the Executive agency may enter into an administrative consent order or a consent judgment in an appropriate United States District Court, containing a plan and schedule to achieve and maintain compliance with the applicable pollution control standard at a Federal facility or with respect to an activity under the control of the agency.

On September 4, 1991 (56 FR 43689), the delegations of authority from the Secretary of Agriculture and the General Officers of the Department were amended to delegate the authority vested in the Secretary of Agriculture by section 1–601 of Executive Order No. 12088 to enter into an inter-agency agreement with the EPA or a consent order or consent judgment with an appropriate State, interstate, or local agency, containing a plan and schedule for compliance with the applicable pollution control standard to the Assistant Secretary for Science and Education with respect to those Federal facilities under the control of the Assistant Secretary, and to redelegate that authority to the Administrator, Agricultural Research Service (ARS), with respect to Federal facilities within the control of ARS.

This document makes similar delegations to the heads of other USDA agencies that have responsibilities over Federal facilities and activities subject to pollution control standards. This document also amends the delegations made to the Assistant Secretary for Science and Education and the Administrator, ARS, to make those delegations consistent with the delegations to the other General Officers of the Department and agency heads.

The delegations of authority of the Department of Agriculture are amended to delegate to the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, the Assistant Secretary for Marketing and Inspection Services, and the Assistant Secretary for Natural Resources and Environment the authority vested in the Secretary of Agriculture by Section 1–601 of Executive Order No. 12088 to enter into an inter-agency agreement with the EPA or a consent order or consent judgment with an appropriate State, interstate, or local agency, containing a plan and schedule for compliance with the applicable pollution control standard with respect to those Federal facilities or activities under the control of the respective Under Secretary and Assistant Secretary. Further, that authority is redelegated by the respective Under Secretary or Assistant Secretary to the Administrators of the Agricultural Stabilization and Conservation Service, Farmers Home Administration, Rural Electrification Administration, Agricultural Marketing Service, Animal and Plant Health Inspection Service, Federal Grain Inspection Service, Food Safety and Inspection Service, and to the Chiefs of the Forest Service and the Soil Conservation Service, with respect to Federal facilities and activities within the control of the respective agencies.

In addition, this document delegates the authority vested in the Secretary of Agriculture by Executive Order No. 12580, January 29, 1987 (52 FR 2923), and Executive Order No. 12777, October 22, 1991 (56 FR 54757), to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9607(f)), section 3112(f)(5) of the Clean Water Act (33 U.S.C. 1321), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)), to the Assistant Secretary for Natural Resources and Environment, with respect to land and facilities under the authority of the Assistant Secretary, and redelegates that authority to the Chief, Forest Service, with respect to land and facilities under the authority of the Chief.

Also, this document delegates the authority vested in the Secretary of Agriculture by Executive Order No. 12580, January 29, 1987 (52 FR 2923), and Executive Order No. 12777, October 22, 1991 (56 FR 54757), to receive notification of a natural resource trustee's intent to file suit in accordance with section 113(g) of CERCLA (42 U.S.C. 9613(g)), to the Assistant Secretary for Natural Resources and Environment, with respect to land and facilities under the authority of the Assistant Secretary, and redelegates that authority to the Chief, Forest Service, with respect to land and facilities under the authority of the Chief.

Finally, this document delegates the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*, to the Assistant Secretary for Natural Resources and Environment with respect to lands under the authority of the Assistant Secretary, and redelegates that authority to the Chief, Forest Service, with respect to lands under his authority.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since the rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Public Law No. 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies)

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by revising the heading and by adding a new paragraph (l) to read as follows:

§ 2.17 Assistant Secretary for Marketing and Inspection Services.

* * * * *

(l) Related to compliance with environmental laws. With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement

with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(1) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(2) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(3) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(4) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(5) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(6) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(7) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(8) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

3. Section 2.19 is amended by revising the heading, by revising paragraph (g), and by adding a new paragraph (h) to read as follows:

§ 2.19 Assistant Secretary for Natural Resources and Environment.

* * * * *

(g) Related to environmental response. (1) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580, January 29, 1987 (52 FR 2923), and Executive Order No. 12777, October 22, 1991 (56 FR 54757), to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(2) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580 under the following provisions of the Comprehensive Environmental Reponse, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

(3) With respect to land and facilities under his authority, to exercise the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended 42 U.S.C. 7401, *et seq.*

(h) *Related to compliance with environmental laws.* With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(1) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(2) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(3) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(4) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(5) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(6) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(7) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(8) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

4. Section 2.21 is amended by revising the heading and by adding a new paragraph (h) to read as follows:

§ 2.21 Under Secretary for International Affairs and Commodity Programs.

* * * * *

(h) *Related to compliance with environmental laws.* With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Section 1–601 of Executive Order No.

12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards, including those established pursuant to the following:

(1) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(2) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(3) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(4) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(5) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(6) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(7) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(8) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

5. Section 2.23 is amended by revising the heading and by adding a new paragraph (j) to read as follows:

§ 2.23 Under Secretary for Small Community and Rural Development.

* * * * *

(j) *Related to compliance with environmental laws.* With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(1) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(2) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(3) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(4) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(5) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(6) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(7) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and;

(8) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

6. Section 2.50 is amended by adding a new paragraph (a)(13) as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a)* * *

(13) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency (EPA), or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act (TSCA), as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

7. Section 2.51 is amended by revising the heading and by adding a new paragraph (a)(46) to read as follows:

§ 2.51 Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(46) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.);*

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

8. Section 2.53 is amended by adding a new paragraph (a)(2) to read as follows:

§ 2.53 Administrator, Federal Grain Inspection Service.

(a)* * *

(2) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United

States Environmental Protection Agency, or an administrative consent or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

9. Section 2.55 is amended by revising the heading and by adding a new paragraph (a)(5) to read:

§ 2.55 Administrator, Food Safety Inspection Service.

(a) * * *

(5) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

10. Section 2.60 is amended by revising paragraph (a)(40), and by adding new paragraphs (a)(42), (a)(43) and (a)(44), to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(40) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580, January 29, 1987 (52 FR 2923), under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117 (a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

* * * * *

(42) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendment (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

(43) With respect to land and facilities under his authority, exercise the functions delegated to the Secretary by Executive Order No. 12580, January 29, 1987 (52 FR 2923), and Executive Order No. 12777, October 22, 1991 (56 FR 54757), to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(44) With respect to land and facilities under his authority, to exercise the authority vested in the Secretary of Agriculture to act as the "Federal Land Manager" pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

* * * * *

11. Section 2.62 is amended by adding a new paragraph (a)(19) to read as follows:

§ 2.62 Chief, Soil Conservation Service.

(a) * * *

(19) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an interagency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, intrerstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

12. Section 2.65 is amended by revising the heading and by adding a new paragraph (a)(42) to read as follows:

§ 2.65 Administrator, Agricultural Stabilization and Conservation Service.

(a) * * *

(42) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to Section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an interagency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

13. Section 2.70 is amended by revising the heading and by adding a new paragraph (a)(37) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) * * *

(37) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an interagency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended (42 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

14. Section 2.72 is amended by revising the heading and by adding a new paragraph (a)(5) to read as follows:

§ 2.72 Administrator, Rural Electrification Administration.

(a) * * *

(5) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an interagency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments (42 U.S.C. 6901, *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

* * * * *

Subpart N–Delegations of Authority by the Assistant Secretary for Science and Education

15. Section 2.106 is amended by revising paragraph (a)(49) to read as follows:

§ 2.106 Administrator, Agricultural Research Service.

(a) * * *

(49) With respect to facilities and activities under his authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–601 of Executive Order No. 12088, October 13, 1978 (43 FR 47077), to enter into an interagency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251, *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f, *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901, *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601, *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, *et seq.*).

For Subpart C.

Dated: April 13, 1992.

Edward Madigan,

Secretary of Agriculture.

For Subpart F.

Dated: April 13, 1992.

John E. Frydenlund,

Deputy Assistant Secretary for Marketing and Inspection Services.

For Subpart G.

Dated: April 29, 1992.

John H. Beuter,

Deputy Assistant Secretary for Natural Resources and Environment.

For Subpart H.

Dated: April 13, 1992.

Richard T. Crowder,

Under Secretary for International Affairs and Commodity Programs.

For Subpart I.

Dated: April 13, 1992.

Michael M.S. Liu,

Deputy Under Secretary for Small Community and Rural Development.

For Subpart N.

Dated: May 1, 1992.

Harry C. Mussman,

Acting Assistant Secretary for Science and Education.

[FR Doc. 92–10718 Filed 5–7–92; 8:45 am]

BILLING CODE 3410–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ASW–31, Amendment 39–8230; AD 92–09–05]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 212 and 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to BHTI Model 212 and 412 helicopters. This amendment requires a one-time check for minimum torque of the retaining nut on the engine-to-driveshaft adapter assembly and, if necessary, replacement of the adapter retaining nut lock washer. Inspection of adjacent parts is also required if the retaining nut rotates prior to reaching minimum torque. This amendment is prompted by a report that the adapter assembly was imporperly installed by the manufacturer. This improper installation could lead to possible failure of the combining main gearbox, loss of power to the main rotor system and necessitate a power-off landing.

DATES: Effective June 2, 1992.

Comments for inclusion in the Rules Docket must be received by June 22, 1992.

ADDRESSES: The applicable service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

Submit comments in triplicate to the Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ASW–31, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

Comments must be marked: Docket No. 91–ASW–31. Comments may be inspected at the above location between the hours of 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Lance T. Gant, FAA, Rotorcraft Certification Office, ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 624–5289.

SUPPLEMENTARY INFORMATION: It has been reported that the engine-to-driveshaft adapter assembly was improperly installed by the manufacturer on certain helicopters. There have been two incidents of the engine-to-driveshaft adapter retaining nut losing torque during helicopter operations. The loss of torque on the retaining nut could cause a high frequency vibration, lead to failure of the combining gearbox, and possible loss of input power to the main transmission. This situation could lead to the loss of power to the main rotor system and necessitate a power-off landing.

Since this condition described is likely to exist or develop on other helicopters of the same type design, this AD is being issued to prevent loss of torque of the engine-to-driveshaft adaptor retaining nut during operation. This AD requires a one time check for minimum torque on the engine-to-driveshaft adapter retaining nut, and, if the nut rotates prior to reaching the minimum torque, removal of the adapter assembly, and replacement of the adapter retaining nut lock washer on the affected helicopters.

Additional inspections of the adapter splines and engine output drive splines are required if the retaining nut rotates prior to achieving the minimum torque.

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

Request for Comments

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this amendment must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-ASW-31." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 airworthiness directive:

AD 92-09-05 Bell Helicopter Textron, Inc.: Amendment 39-8230 Docket No. 91-ASW-31.

Applicability: Model 212 helicopters, serial numbers (S/N) 35001 through 35037, 35039, and 35040; and Model 412 helicopters, S/N 36001 through 36025, and 36027, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent possible failure of the combining gearbox, which could result in loss of power to the main rotor system, accomplish the following:

(a) Within the next 20 hours' time in service after the effective date of this AD, perform an inspection of the torque on the engine-to-driveshaft coupling adapter retaining nut, part number (P/N) 212-040-631-001, as follows:

(1) Remove the engine-to-transmission driveshaft in accordance with the appropriate Bell Helicopter Textron, Inc. Maintenance Manual, being careful not to remove the driveshaft adapter assembly.

(2) Check the torque of the engine-to-driveshaft adapter retaining nut.

(i) If the retaining nut rotates before attaining 125 foot-pounds of torque (check torque in locking direction) comply with the remaining portion of this AD.

(ii) If the retaining nut does not rotate before attaining 125 foot-pounds of torque, no further action is required except to reinstall the engine-to-transmission driveshaft in accordance with the appropriate Bell Helicopter Maintenance Manual.

(b) Remove the engine-to-driveshaft coupling adapter in accordance with the appropriate Bell Helicopter Component Repair and Overhaul Manual for the Model 212 or the appropriate Bell Helicopter Maintenance Manual for the Model 412, and inspect the adapter as follows:

(1) Check the adapter splines for evidence of corrosion fretting. Red dust is an indication of fretting. If fretting is indicated, replace the adapter with a serviceable part before further flight and accomplish the requirements of paragraphs (c) and (d) of this AD.

(2) Measure the internal splines of the adapter for a maximum dimension between pins of 1.6632 inches. Use 0.1080 inch diameter pins flatted on one side to 0.1040 inches. If the maximum dimension between pins exceeds 1.6632 inches, replace the adapter with a serviceable part prior to further flight and accomplish the requirements of paragraphs (c) and (d) of this AD.

(c) Inspect the engine output drive splines as follows:

(1) Inspect the engine output drive splines for evidence of corrosion fretting. Red dust is an indication of corrosion fretting. If fretting is indicated, overhaul the combining gearbox in accordance with the appropriate Pratt and Whitney overhaul manual.

(2) Measure the engine output splines for a minimum dimension of 1.9565 inches over pins. Use 0.1080 inch diameter pins. If the minimum dimensions over pins is less than 1.9565 inches, overhaul the combining gearbox in accordance with the appropriate Pratt and Whitney overhaul manual.

(d) Install the engine-to-driveshaft coupling adapter as follows:

(1) Position the adapter on the engine.

(2) Install the new lock washer. Ensure that the mating face of the lock washer to the adapter is dry. No lubricant is to be used.

(3) Lubricate the threads and mating face of the retaining nut to the lock washer using grease MIL–G–25537 or MIL–G–81322.

(4) Install the retaining nut hand tight. Using a suitable marker, mark an index line on the outer lock washer tang and adapter. This will enable verification that the lock washer does not rotate during torquing operation.

(5) Position the plate on the adapter. Install the nut. Position the bar in the retaining nut.

(6) Torque the retaining nut to 250 to 275 foot-pounds (339 to 373 newton-meters) for initial torque. Loosen the retaining nut and then torque 125 to 200 foot-pounds (170–271 newton-meters).

(7) Remove the bar and the plate.

(8) Inspect the washer to ensure that the tang indexed in paragraph (d)(4) has not rotated. If the inspection reveals that the washer has rotated, repeat the work of paragraphs (d)(2) through (d)(8) using a new lock washer.

(9) Bend one tang of the washer into the retaining nut.

(10) Install the engine-to-transmission driveshaft in accordance with the appropriate Bell Helicopter Maintenance Manual.

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

(f) Compliance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 212–91–67, dated 6/24/91, for the Model 212 helicopter, or Alert Service Bulletin No. 412–91–53, dated 6/24/91, for the Model 412 helicopter, constitutes compliance with this AD.

(g) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used if approved by the Manager, Rotorcraft Certification Office, ASW–170, Rotorcraft Directorate, Aircraft Certification Service, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, 76193–0170. The request shall be forwarded through an FAA inspector who may concur or comment and then send it to the Manager of the Rotorcraft Certification Office.

(h) This amendment becomes effective June 2, 1992.

Issued in Fort Worth, Texas, on April 6, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–10770 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–192–AD; Amendment 39–8245; AD 92–10–11]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires modifications of the soft bulkhead support structure at body station (BS) 1640 and replacement of the lining with a new lining containing blowout vents. This amendment is prompted by an evaluation indicating that large pressure loads will occur if there is a sudden decrease in air pressure aft of the bulkhead lining. The actions specified by this AD are intended to prevent damage to the floor beam at BS 1640, hydraulic system components, and flight controls.

DATES: Effective June 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 1, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information my be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street, NW., room 8401 Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S; telephone (206) 227–2779. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on October 21, 1991 (56 FR 52489). That action proposed to require modifications of the soft bulkhead support structure at body station (BS) 1640 and replacement of the lining with a new lining containing blowout vents.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the rule as proposed.

Several members of the Air Transport Association (ATA) of America suggest that the proposed rule conflicts with the Partial Grant of Exemption granted by the FAA to the requirements of FAR 121.314, Amendment 121–202, which allows replacement of cargo liners to be accomplished by March 20, 1994. ATA members request that the proposed compliance time of this AD action (18 months) be extended to coincide with that exemption date. The FAA agrees that the compliance time may be extended. The proposed 18-month compliance time was selected as a time that would correspond to the interval representative of most of the affected operators' normal heavy maintenance schedules; the FAA's intent was for the modification to be done during regularly scheduled maintenance at a location where necessary special equipment and trained personnel would be available. However, information supplied by the affected industry has provided a more realistic assessment of the time and special scheduling considerations the affected operators must make in performing the required modification. The proposed compliance time apparently will not allow sufficient time for operators with large fleets to schedule and accomplish the modifications without causing considerable economic hardship on the operator. The FAA considers that, by extending the compliance time an additional 6 months, operators will be able to accomplish the modification required both by this AD and by Amendment 121–202 in a timely manner and without additional disruption of operations. The final rule has been revised to reflect a 24-month compliance time. The FAA has determined that this extension will not adversely affect safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 368 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 226 airplanes of U.S. registry will be affected by this AD, that it will take approximately 27 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Modification kits are available from the manufacturer at no charge. Based on these figures, the

total cost impact of the AD on U.S. operators is estimated to be $335,610. This "total cost" figure assumes that no operator has yet accomplished the modification.

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

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 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 airworthiness directive:

92-10-11. Boeing: Amendment 39-8245. Docket 91-NM-192-AD.

Applicability: Model 757 series airplanes, listed in Boeing Alert Service Bulletin 757-25A0112, dated July 18, 1991, certificated in any category.

Compliance: Required within the next 24 months after the effective date of this AD, unless previously accomplished.

To prevent damage to the floor beam at body station (BS) 1640, hydraulic system components, and flight control functions in the event of a sudden decrease in air pressure aft of the bulkhead lining, accomplish the following:

(a) Modify the soft bulkhead support structure at BS 1640 and replace the bulkhead lining in accordance with Boeing Alert Service Bulletin 757-25A0112, dated July 18, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(d) The modification shall be done in accordance with Boeing Alert Service Bulletin 757-25A0112, dated July 18, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(e) This amendment becomes effective on June 1, 1992.

Issued in Renton, Washington, on April 20, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-10834 Filed 5-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-231-AD; Amendment 39-8237; AD 91-03-19 R1]

Airworthiness Directives; Boeing Model 727-200 and 727-200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Boeing Model 727-200 and 727-200F series airplanes, that currently requires repetitive inspection to detect cracks of the fuselage skin under the center engine inlet pedestal housing, and repair, if necessary. Such cracking, if not corrected, could result in rapid depressurization of the cabin. This action revises the AD to include an additional optional repair that, if accomplished, will terminate the repetitive inspection requirement of the existing AD.

This amendment is prompted by the development of a repair that significantly reduces the possibility of fatigue cracks developing.

DATES: Effective June 12, 1992 .

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 12, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commerical Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 91-03-19, Amendment 39-6885 (56 FR 4536, February 5, 1991), which is applicable to Boeing Model 727-200 and 727-200F series airplanes, was published in the **Federal Register** on January 2, 1992 (57 FR 19). The action proposed to revise the AD to include an additional optional repair that, if accomplished, would terminate the repetitive inspection requirement of the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests an extension of the compliance time for the repetitive inspections required by proposed paragraph (b) of the AD; the commenter requests an extension from the proposed 2,500 to 3,000 flight cycles. The extended compliance time would more closely align to a "C" check and be consistent with the recommendations of the applicable service bulletin. The proposed compliance time of 2,500 flight cycles would require operators to special schedule this inspection at considerable expense over what was

estimated by the cost impact analysis. The FAA concurs with the commenter's request to extend the compliance time for the repetitive inspections. The FAA notes that this same request was made previously during the rulemaking procedures related to the existing AD; at that time, the FAA did not concur with the request. However, since the issuance of that AD, the FAA has reevaluated information regarding compliance times for repetitive inspections, and has determined that extending the compliance time by 500 flight cycles will not adversely affect safety. An extended compliance time will allow the inspection and, if necessary, repair to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph (b) of the final rule has been revised to specify a compliance time of 3,000 flight cycles.

Another commenter states that the unsafe condition is fatigue related. Since fatigue related problems are attribed to time-in-service and not to calendar limits, the commenter feels that the 18 month compliance time for the repetitive inspection required by proposed paragraph (b) of the AD is not justified. The FAA does not concur. While the development of fatigue cracks within a fleet of airplanes can be statistically correlated to a flight cycle threshold (assuming a statistically significant sample size), cracking on any specific airplane within that fleet cannot. Therefore, the FAA considers it prudent to perform a minimum level of inspection of low-utilization airplanes independently of a flight cycle threshold. The FAA has determined that inspection intervals not exceeding 18 months (representative of typical "C" check intervals) are appropriate. Should an operator believe that its operations represent unique circumstances, the FAA would consider adjusting the inspection interval in accordance with paragraph (e) of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,250 Model 727–200 and 727–200F series airplanes of the affected design in the worldwide fleet. It is estimated that 1,000 airplanes of U.S. registry will be affected by this AD. Should an operator elect to accomplish the optional terminating modification proposed by this AD action, it will take approximately 30 work hours per airplane to accomplish the modification, at an average labor cost of $55 per work hour. Required parts will cost $108 per airplane. Based on these figures, the total cost impact of the optional modification to U.S. operators will be $1,758,000 or $1,758 per airplane.

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

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 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing amendment 39–6885 (56 FR 4536, February 5, 1991), and by adding a new airworthiness directive (AD), amendment 39–8237, to read as follows:

91–03–19 R1. Boeing: Amendment 39–8237. Docket 91–NM–231–AD. Revises AD 91–03–19, Amendment 39–6885.

Applicability: Model 727–200 and 727–200F series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid depressurization of the cabin due to fuselage cracks under the center engine inlet pedestal housing, accomplish the following:

(a) Perform a detailed external visual inspection for fuselage skin cracks from body station (BS) 1090 to BS 1110, in accordance with Boeing Alert Service Bulletin 727–53A0204, Revision 3, dated August 15, 1991, or previous FAA-approved revisions, within the time specified in subparagraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes identified as Group 1 in the service bulletin, inspect within 500 flight cycles or 2 months after March 11, 1991 (the effective date of AD 91–03–19, Amendment 39–6885), whichever occurs first.

(2) For airplanes identified as Group 2 in the service bulletin, inspect within 1,250 flight cycles or 6 months after March 11, 1991, whichever occurs first.

(3) For airplanes identified as Group 3 in the service bulletin, inspect within 2,500 flight cycles or 18 months after March 11, 1991, whichever occurs first.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first.

(c) If fuselage skin cracks are found, prior to further flight, accomplish either of the following:

(1) Repair in accordance with the Boeing Alert Service Bulletin 727–53A0204, Revision 2, dated August 9, 1990, or previous FAA-approved revisions. After repair, continue the repetitive inspections in accordance with paragraph (b) of this AD. Or

(2) Repair in accordance with Part III, paragraph B. or D., of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0204, Revision 3, dated August 15, 1991. This constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD.

(d) *In cases where cracking is not found,* modification in accordance with one of the following service documents constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD:

(1) Boeing Drawing 65C35757; or

(2) Paragraph C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0204, Revision 2, dated August 9, 1990, or Revision 3, dated August 15, 1991.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

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

(g) The inspection, repair, and modification shall be done in accordance with Boeing Alert Service Bulletin 727-53A0204, Revision 2, dated August 9, 1990; or Revision 3, dated August 15, 1991; as appropriate. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(h) This amendment becomes effective on June 12, 1992.

Issued in Renton, Washington, on April 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-10704 Filed 5-7-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-97-AD; Amendment 39-8236; AD 92-10-03]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, that requires repetitive visual inspections to detect damaged in-line splices in the integrated drive and in the Auxiliary Power Unit (APU) generator circuits, and repair, if necessary; and eventual modifications which would terminate the requirement for the repetitive inspections. This amendment is prompted by reports of damage to the in-line splices in the integrated drive and APU generator circuits due to overheating. The actions specified by this AD are intended to prevent overheating of in-line splices in the integrated drive and APU generator circuits, which could result in a fire.

DATES: Effective June 12, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 12, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to British Aerospace Model BA 146 series airplanes was published in the **Federal Register** on January 23, 1992 (57 FR 2693). That action proposed to require repetitive visual inspections to detect damaged in-line splices in the integrated drive and APU generator circuits, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and approximately 68 work hours to accomplish the required modifications. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,280.

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

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 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 airworthiness directive:

92-10-03. British Aerospace: Amendment 39-8236. Docket 91-NM-97-AD.

Applicability: British Aerospace Model BAe 146 series airplanes, as listed in British Aerospace Inspection Service Bulletins 24-83 and 24-84, both dated January 22, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fire and to provide overheat protection, accomplish the following.:

(a) Within 60 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days for a period of two years after the initial inspections, perform a visual inspection of the in-line splices in the Auxiliary Power Unit (APU) generator circuits for heat damage, in accordance with the Accomplishment Instructions in British Aerospace Inspection Service Bulletin 24-83, dated January 22, 1991.

Note: The FAA has determined that if the in-line splices do not show signs of overheating within a two-year period of time, no problem will develop.

(1) If heat-damaged splices are found, prior to further flight, accomplish one of the following:

(i) Perform a temporary repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Bulletin 24-83, dated January 22, 1991, by installing Modification HCM50134A, as described in Modification Service Bulletin 24-83-50134A, Revision 1, dated March 15, 1991; or

(ii) Perform a permanent repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Bulletin 24-83, dated January 22, 1991, by installing Modification HCM36097A or Modification HCM36097B, as

described in Modification Service Bulletin 24–82–36097A&B, dated February 11, 1991.

(2) Accomplishment of one of the modifications at a splice location in accordance with either paragraphs (a)(1)(i) or (a)(1)(ii) of this AD, constitutes terminating action for the requirements for the repetitive inspections required by paragraph (a) of this AD at that splice location.

(b) Within 60 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days for a period of two years after the initial inspection, perform a visual inspection of all in-line splices in the integrated drive generator circuits, in accordance with the Accomplishment Instructions in British Aerospace Inspection Bulletin 24–84, dated January 22, 1991.

(1) If heat damaged splices are found, prior to further flight, accomplish one of the following:

(i) Perform a temporary repair in accordance with paragraph 2.A(4) of British Aerospace Inspection Service Bulletin 24–84, dated January 22, 1991, by installing Modification MCM50134B, as described in Modification Service Bulletin 24–84–50134B, Revision 1, dated March 15, 1991; or

(ii) Perform a permanent repair in accordance with paragraph 2.A(4) or British Aerospace Inspection Service Bulletin 24–84, dated January 22, 1991, by installing Modification HCM01253A, as described in Modification Service Bulletin 24–85–01253A, Revision 1, dated March 15, 1991.

(2) Accomplishment of one of the modifications at a splice location in accordance with paragraphs (b)(1)(i) or (b)(1)(ii) of this AD, constitutes terminating action for the requirements for the repetitive inspections required by paragraph (b) of this AD at the splice location.

(c) Temporary repairs made at a splice location in accordance with paragraphs (a) or (b) of this AD, and temporary repairs made previously in accordance with British Aerospace Service Inspection Bulletin 24–A75 or 24–A76, must be replaced with a permanent repair at that splice location within 12 months after the temporary repair was installed, or within 12 months after the effective date of this AD, whichever occurs later, in accordance with British Aerospace Service Inspection Bulletin 24–83, dated January 22, 1991, or British Aerospace Service Bulletin 24–84, dated January 22, 1991, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

(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) The modifications, inspections, and repairs shall be done in accordance with the following British Aerospace Service Bulletins, which contain the specified list of effective pages:

Service Bulletin No.	Page	Revision Level	Date
Inspection Service Bulletin 24–83	1–4	Original	Jan. 22, 1991.
Modification Service Bulletin 24–82–36097A&B	1–13	Original	Feb. 11, 1991.
Inspection Service Bulletin 24–84	1–5	Original	Jan. 22, 1991.
Modification Service Bulletin 24–83–50134A	1, 2, 9	Revision 1	Mar. 15, 1991.
	3–4, 5, 6, 7–8	Original	Undated.
Modification Service Bulletin 24–84–50134B	1, 2, 11	Revision 1	Mar. 15, 1991.
	3–4, 5, 6, 7–8, 9–10	Original	Undated.
Modification Service Bulletin 24–84–01253A	1, 3–4, 11,	Revision 1	Mar. 15, 1991.
	2, 5, 6, 7–8, 9–10	Original	Undated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. Copies may be inspected at the FAA, Transport Washington, DC 20041. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment becomes effective on June 12, 1992.

Issued in Renton, Washington, on April 13, 1992.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–10835 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–AEA–21]

Alteration of Control Zone; Rome, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document modifies the Rome, NY, Control Zone, in response to a request from the U.S. Department of the Air Force. This action provides controlled airspace for the segregation of aircraft operating under instrument flight rules to and from Griffiss Air Force Base (AFB), Rome, NY, from other aircraft operating in visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c. June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857 .

SUPPLEMENTARY INFORMATION:

History

On October 22, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Rome, NY, Control Zone due to a request from the U.S. Department of the Air Force (56 FR 56951). The proposed action would ensure that adequate controlled airspace exists to segregate aircraft operating under instrument flight rules to and from Griffiss AFB, Rome, NY, from aircraft operating in visual weather conditions in controlled airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received on this proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. The control zone description was republished 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 revises the Rome, NY, Control Zone due to a request from the U.S. Department of the Air Force.

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. Therefore, this regulation: (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 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

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 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 71.171 Control Zones

* * * * *

AEA NY CZ Rome, NY [Revised]
Griffiss AFB, Rome, NY
(lat. 43°13'58"N., long. 75°24'25"W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.4-mile radius of Griffiss AFB, Rome, NY and within 1.8 miles each side of a 314°(T) 327°(M) bearing extending from the 4.4-mile radius to 7.9 miles northwest of the airport and within 1.8 miles each side of a 134°(T) 147°(M) bearing extending from the 4.4-mile radius to 7.9 miles southeast of the airport.

* * * * *

Issued in Jamaica, New York, on April 10, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–10777 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–15]

Revocation of Transition Area; Hershey, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revokes the 700 foot Transition Area established at Hershey, PA, due to the deactivation of Hershey Airpark, Hershey, PA, and the cancellation of all Standard Instrument Approach Procedures (SIAP) to the airpark.

EFFECTIVE DATE: 0901 u.t.c. June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

On September 23, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot Transition Area established at Hershey, PA, due to the deactivation of the Hershey Airpark, Hershey, PA, and the cancellation of all SIAPs to the airpark (56 FR 54812).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The transition area description was republished in § 71.181 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 revokes the 700 foot Transition Area established at Hershey, PA, due to the deactivation of the Hershey Airpark, Hershey, PA, and the cancellation of all SIAPs to the airpark.

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. Therefore, this regulation: (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 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, Transition areas, Incorporation by reference.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 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

* * * * *

AEA PA TA Hershey, PA [Removed]

* * * * *

Issued in Jamaica, New York, on April 10, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–10773 filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–18]

Increase in Operating Hours of Control Zone; Johnstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the established operating hours of the Johnstown, PA, Control Zone to reflect the actual availability of aviation services offered to pilots in the Johnstown, PA, area. The revised operating hours of the control zone will be reflected in all aeronautical publications. Additionally, the geographic coordinates of the airport will be updated, and minor technical amendments are being made to the legal description to reflect the actual location of the airport and that amount of controlled airspace required to contain aircraft operations under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. June 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

On October 10, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the operating hours of the Johnstown, PA Control Zone due to the expanded availabilty of aviation services available to pilots in the Johnstown, PA, area (56 FR 55640). The proposed action would revise the operating hours of the control zone to coincide with the availability of aviation services and would update the geographic location of the airport upon which the control zone is based.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. The control zone description was republished 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 revises the operating hours of the Johnstown, PA Control Zone to reflect the actual availability of aviation services in the area. Additionally, the coordinates of the airport upon which the control zone is based are being updated to reflect the actual location of the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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 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, Transition areas, Incorporation by reference.

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 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 71.171 Control Zones

* * * * *

AEA PA CZ Johnstown, PA [Revised]
Johnstown-Cambria County Airport, Johnstown, PA
(lat. 40°19'00"N., long 78°50'05"W.)
Johnstown VORTAC (lat. 40°19'00"N., long. 78°50'04"W.)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 4.8-mile radius of Johnstown-Cambria County Airport and within 3.1 miles each side of the Johnstown VORTAC 044° radial extending from the 4.8-mile radius to 8.7 miles northeast of the VORTAC and within 2.7 miles each side of the Johnstown VORTAC 216° radial extending from the 4.8-mile radius to 7.4 miles southwest of the VORTAC and within 3.1 miles each side of the Johnstown VORTAC 320° radial extending from the 4.8-mile radius to 9.2 miles northwest of the VORTAC. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on April 10, 1992.

Gary W. Tucker,
Manager, Air Traffic Division.

[FR Doc. 92–10771 Filed 5–7–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 770 and 785

[Docket No. 920413—2113]

Exports to Hungary; Country Group V

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Following Hungary's agreement to control exports of items controlled by COCOM, regardless of origin, as well as its recent decree to control indigenously-produced commodities, the Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by removing Hungary from the Country Group W list and placing it in Country Group V. Hungary is therefore eligible for licensing treatment given most other Country Group V destinations such as general licenses GLV and GFW, and the Distribution License. Individual Validated Licenses for Hungary will be considered on a case-by-case basis consistent with current licensing policy for Country Group V.

EFFECTIVE DATE: This rule is effective May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Dave Schlechty, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377–4252.

SUPPLEMENTARY INFORMATION:

Background

The United States has followed closely efforts made by Hungary to establish an effective export control system. Hungary has established a comprehensive export control system and agreed to control COCOM-controlled items, regardless of origin. On April 2, 1992, the Hungarian Government issued a decree that provides for control of goods and technology produced indigenously.

Section 5(b)(1) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2404(b)(1)),

provides for removal of a country from the list of "controlled countries" that are proscribed destinations for purposes of national security controls under the EAR. Removal may be effected only after a determination is made that the export of goods or technology to such country would not make a significant contribution to the military potential for such country or combination of countries which would prove detrimental to the national security of the United States. Pursuant to the provisions of section 5(b)(1), the Under Secretary for Export Administration, in consultation with appropriate agencies, has determined that the export of goods or technology to Hungary would not make a significant contribution to the military potential of Hungary or any combination of countries which would prove detrimental to the national security of the United States. Moreover, the governments participating in COCOM are satisfied that Hungary has met all COCOM criteria for removal from the list of proscribed destinations. The United States Government is therefore removing Hungary from Country Group W and placing it in Country Group V.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0010, and 0694–0015.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibiity Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania, NW., room 4069, Washington, DC 20230.

List of Subjects

15 CFR Part 770

Administrative practice and procedure, Exports.

15 CFR Part 785

Exports.

Accordingly, parts 770 and 785 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 770 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

2. The authority citation for 15 CFR part 785 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat.197 (18 U.S.C. 2510 *et seq.*), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended; E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 26, 1991 (56 FR 49385, September 27, 1991); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 14, 1991 (56 FR 58171, November 15, 1991).

PART 770—[AMENDED]

3. Supplement No. 1 to part 770 is amended by removing the term "Hungary" under the heading "Country Group W".

PART 785—[AMENDED]

§ 785.2 [Amended]

4. Section 785.2 is amended by removing the term "Hungary," from paragraph (a)(1), and by removing the term ", Hungary," from paragraph (c) each place it appears.

Dated: May 4, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92–10765 Filed 5–7–92; 8:45 am]

BILLING CODE 3510–DT–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220 and 1238

RIN 3095-AA00

Records Management

AGENCY: National Archives and Records Administration

ACTION: Final rule.

SUMMARY: This rule makes minor corrections and clarifications to NARA's records management regulations in 36 CFR parts 1220 and 1238. These regulations apply to Federal agencies. The rule will have no significant impact on the agencies. This regulation was developed during a periodic review of existing NARA regulations to identify outdated or incomplete material. Because all changes are editorial in nature, this final rule is being published without prior notice of proposed rulemaking.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Ann Palmos or Nancy Allard at 202-501-5110.

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of subjects

36 CFR Part 1220
Archives and records
36 CFR Part 1238
Archives and records

For the reasons set forth in the preamble, NARA is amending Chapter

XII of Title 36 of the Code of Federal Regulations as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

2. Section 1220.2 is revised to read as follows:

§ 1220.2 Responsibility for records management programs.

The National Archives and Records Administration Act of 1984 amended the records management statutes to divide records management responsibilities between the National Archives and Records Administration (NARA) and the General Services Administration (GSA). Under the Act, NARA is responsible for adequacy of documentation and records disposition and GSA is responsible for economy and efficiency in records management. NARA regulations are codified in this subchapter. GSA records management regulations are codified in 41 CFR chapter 201, Subchapters A and B. Federal agency records management programs must be in compliance with regulations promulgated by both NARA and GSA.

3. In § 1220.14, the introductory text of the definition of "Disposition," and the definitions of "National Archives of the United States," "Temporary records," and "Unscheduled records" are revised to read as follows:

§ 1220.14 General definitions.

* * * * *

Disposition means those actions taken, after appraisal by NARA, regarding records no longer needed for the conduct of the regular current business of the agency. 44 U.S.C. 2901(5) defines *records disposition* as any activity with respect to:

* * * * *

National Archives of the United States means those records that have been determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the Federal Government and that have been transferred to the legal custody of the Archivist of the United States on a Standard Form 258 (Request to Transfer, Approval, and Receipt of Records to National Archives of the United States).

* * * * *

Temporary records. A temporary record is any record which has been determined by the Archivist of the United States to have insufficient value (on the basis of current standards) to warrant its preservation by the National Archives and Records Administration. This determination may take the form of:

(a) A series of records designated as disposable in an agency records disposition schedule approved by NARA (Standard Form 115, Request for Records Disposition Authority); or

(b) A series of records designated as disposable in a General Records Schedule.

Unscheduled records are records the final disposition of which has not been approved by NARA. Unscheduled records are those that have not been included on a Standard Form 115, Request for Records Disposition Authority, approved by NARA; those described but not authorized for disposal on an SF 115 approved prior to May 14, 1973; and those described on an SF 115 but not approved by NARA (withdrawn, canceled, or disapproved).

4. Sections 1220.34 and 1220.36 are revised to read as follows:

§ 1220.34 Creation of records.

Adequate records management controls over the creation of Federal agency records shall be instituted to ensure that agency functions are adequately and properly documented. Federal agencies shall also comply with GSA regulations on creation of records found in 41 CFR part 201-9.

§ 1220.36 Maintenance and use of records.

Adequate records management controls over the maintenance and use of records shall be instituted to ensure that permanent records can be located when needed and that they are preserved for eventual transfer to the National Archives of the United States. Agencies shall also be in compliance with GSA regulations on the maintenance and use of records found in 41 CFR part 201-9.

PART 1238—PROGRAM ASSISTANCE

5. The authority citation for part 1238 continues to read as follows:

Authority: 44 U.S.C. 2904 and 3101.

6. Section 1238.2 is revised to read as follows:

§ 1238.2 Requests for assistance.

Agencies desiring information or assistance related to any of the areas covered by subchapter B should contact the Agency Services Division, Office of Records Administration, National Archives (NIA), Washington, DC 20408. Agency field organizations may contact the director of the appropriate Federal records center regarding records in or scheduled for transfer to the records center, or the director of the appropriate regional archives regarding records in or scheduled for transfer to the regional archives.

Dated: March 30, 1992.

Claudine J. Weiher,

Acting Archivist of the United States

[FR Doc. 92-10839 Filed 5-7-92; 8:45]

BILLING CODE 7515-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4131-3]

South Dakota; Authorization of State Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Affirmation of immediate final rule.

SUMMARY: This notice responds to comments received on the immediate final rule published April 17, 1991, (56 FR 15503), and affirms the agency's decision to authorize South Dakota's revised program pursuant to 40 CFR 271.21(b)(3).

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, at U.S.E.P.A., Region VIII, 999 18th Street, suite 500, Denver, CO 80202-2405, telephone 303/293-1670.

SUPPLEMENTARY INFORMATION: On April 17, 1991, EPA published an immediate final rule pursuant to 40 CFR 271.21(b)(3) at 56 FR 15503 which announced the agency's decision to authorize South Dakota's revisions to its hazardous waste program. Comments were received during the public comment period from one responder. After considering the comments received, the Regional Administrator has decided to affirm his decision to authorize the State of South Dakota for the program revisions. The following is a summary of the comments and the Regional Administrator's response.

Comment: The comment raised questions about the existing authority of South Dakota to operate the Federal hazardous waste program.

Response: Section 3006(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6926(b) provides for EPA authorization of State hazardous waste programs. In fact, Congress designed the law so that the entire hazardous waste program under Subtitle C would eventually be administered by the States under State law in lieu of the

Federal Government. The statute establishes the basic standards that a State hazardous waste program must meet in order to qualify for final authorization. The state program:

- Must be "equivalent" to the Federal program;
- May not impose any requirements "less stringent" than the Federal requirements;
- May, however, impose requirements which are "more stringent" than those imposed by Federal regulations;
- Must be "consistent" with the Federal program and other State programs;
- Must follow specific procedures for public "notice and hearing" in the permitting process; and
- Must "provide adequate enforcement."

EPA further interpreted these statutory requirements by promulgating regulations at 40 CFR part 271. The regulations provide detailed requirements that a State program must meet in order to be authorized.

South Dakota received final authorization from EPA to implement the subtitle C hazardous waste program on November 2, 1984. This authorization included authority for South Dakota to issue permits and permit modifications to waste storage facilities. States have a continuing obligation to remain equivalent to the Federal program. Therefore, modification to the Federal program, due to statutory and regulatory changes, usually necessitates subsequent modifications to the South Dakota authorized program. EPA must review such State modifications to ensure that the South Dakota program continues to meet Federal authorization requirements. Until South Dakota is authorized for such modifications, EPA is responsible for implementing many of the Federal regulations in the State.

Comment: The comment expressed concern about the public's access to hazardous waste information held by South Dakota agencies and referenced section 3006(f) of the Solid Waste Disposal Act, as amended, which specifies requirements for public availability of information under authorized State hazardous waste programs. The commentor did not support final authorization for South Dakota's program revision application without the public availability of information component.

Response: The 1984 amendments to RCRA included an amendment to the "equivalent" requirement of section 3006(b)(1) that allowed greater flexibility in approving State programs. The legislative history for this provision suggests that Congress was satisfied to leave deadlines for program revisions to the Agency's discretion. Thus, the Agency has flexibility to authorize portions of a State program in lieu of the Federal program, leaving for another day the authorization of the remaining portions. In addition, in the legislative history for the 1984 amendments, Congress made clear that EPA could phase-in requirements for section 3006(f) in the same manner that changes to the Federal regulatory program, made after a State received its initial authorization, are phased-in by authorized States.

While this revision application is being authorized without a section 3006(f) component, the public availability of information is still being addressed as follows:

On March 12, 1992, the Governor of South Dakota signed HB No. 1001 which addresses the availability of public records. South Dakota has agreed submit an application for authorization of 3006(f) by July 1, 1992. EPA believes that the State of South Dakota is on an acceptable timetable for authorization of its availability of information provision. The State of South Dakota has also agreed to submit an application for non-HSWA clusters 3, 4, 5 and 6 as well as the remainder of HWSA cluster 1 and cluster 2 by September 30, 1992.

In addition, EPA has a Memorandum of Agreement with South Dakota dated February 10, 1991, signed by the State Director of the Division of Environmental Regulation and the Regional Administrator of EPA Region VIII. This Memorandum of Agreement commits the State of South Dakota to make hazardous waste information available to the public. In accordance with the EPA/South Dakota Memorandum of Agreement, EPA has access to hazardous waste information held by the State of South Dakota. Until South Dakota is authorized for section 3006(f), the interested public may contact EPA Region VIII under the Freedom of Information Act for possible assistance in acquiring hazardous waste information from South Dakota if the State for some reason is not providing the information. The public is cautioned that the State and EPA may not be able to disclose certain information that may be exempt or confidential under EPA public information regulations (40 CFR part 2).

Comment: The comment asked if the South Dakota hazardous waste program was inconsistent with the Federal program because the State allegedly decided that infectious waste is not a hazardous waste.

Response: The immediate final rule published April 17, 1991 (56 FR 15503), that precipitated this comment, did not address the issue of "infectious waste." The revisions to the South Dakota hazardous waste program which EPA proposed to authorize did not deal with this topic.

The Solid Waste Disposal Act, as amended, (section 1004) includes a definition of the term "hazardous waste" which "means a solid waste or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or *infectious characteristics* (emphasis added) may—

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed."

Although Congress defined the term "hazardous waste" in the Act to include solid wastes with "infectious characteristics", the regulatory framework which EPA developed to identify those solid wastes that must be managed as hazardous waste under subtitle C (40 CFR part 261) does not include solid wastes with "infectious characteristics." As noted above, in order to qualify for authorization, a State must implement a State hazardous waste program that is equivalent to the Federal RCRA program. Since the Federal hazardous waste program does not regulate infectious wastes, a State need not do so in order to maintain equivalency.

In summary, we herein affirm our April 17, 1991, decision to authorize South Dakota's revised program pursuant to 40 CFR part 271(b)(3).

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. It merely reaffirms a decision to authorize revisions to South Dakota's program. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 22, 1992.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 92-10817 Filed 5-7-92; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-315; RM-6308; RM-6532; RM-7561]

Radio Broadcasting Services; Hawesville and Hardinsburg, KY, Bloomfield, Huntingburg, Loogootee and Scottsburg, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of HIC Broadcasting, Inc., substitutes Channel 232C2 for Channel 232A at Hardinsburg, Kentucky, and modifies the license of Station WHIC(FM) to specify operation on the higher class channel; and substitutes Channel 265B1 for Channel 265A at Huntingburg, Indiana, and modify the license for Station WBDC(FM) to specify operation on the higher class channel, at the request of Dubois County Broadcasting, Inc. In addition, this action substitutes Channel 287A for Channel 265A at Scottsburg, Indiana, modifies the license for Station WMPI(FM) to specify operation on Channel 287A, and substitutes Channel 231A for Channel 232A at Loogootee, Indiana, and modifies the license for Station WKMD(FM) to specify operation on Channel 231A. See 53 FR 26614, July 14, 1988, and Supplemental Information, *Infra.*

EFFECTIVE DATE: June 15, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-315, adopted April 15, 1992, and released May 1, 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. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 265B1 can be allotted to Huntingburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.2 kilometers (6.3 miles) southeast to avoid short-spacings to Station WMGI(FM), Channel 264B, Terre Haute, Indiana, and the site specified in the construction permit (BPH-890710JW) for Channel 266A at Bloomfield, Indiana. The coordinates are 38-13-30 and 86-53-00. Channel 232C2 can be allotted to Hardinsburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.3 kilometers (13.9 miles) northeast, in order to avoid short-spacings to Station WDBL(FM), Channel 232A, Springfield, Tennessee, and Station WLAP(FM), Channel 233C1, Lexington, Kentucky. The coordinates are 37-52-00 and 86-14-00. Channel 287A can be allotted to Scottsburg in compliance with the Commission's minimum distance separation requirements with a site relocation. The coordinates are 38-41-40 and 85-41-10. Channel 231A can be allotted to Loogootee in compliance with the Commission's minimum distance separation requirements, with a site restriction of 8.3 kilometers (5.2 miles) southwest at its current transmitter site. The coordinates are 38-37-09 and 86-58-27. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 265A and adding Channel 265B1 at Huntingburg, by removing Channel 232A and adding Channel 231A at Loogootee, and by removing Channel 265A and adding Channel 287A at Scottsburg.

3. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 232A and adding Channel 232C2 at Hardinsburg.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-10782 Filed 5-7-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-40; RM-6035, RM-6349, RM-6350]

Radio Broadcasting Services; Jacksonville, Pine Knoll Shores, and Harkers Island, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 272A to Pine Knoll shores, North Carolina (RM-6349), and Channel 262C1 to Harkers Island, North Carolina (RM-6350). See 53 FR 6163, published March 1, 1988. This document also dismisses a petition for rule making filed by Marine Broadcasting Corporation proposing the allotment of Channel 262C1 to Jacksonville, North Carolina. The reference coordinates for the Channel 272A allotment at Pine Knoll Shores, North Carolina, are 34-42-33 and 76-38-00. The reference coordinates for the Channel 262C1 allotment at Harkers Island, North Carolina, are 34-41-40 and 76-33-42. With this action, this proceeding is terminated.

DATES: *Effective:* June 18, 1992. The window period for filing applications for the Channel 262A allotment at Pine Knoll Shores, North Carolina, and the Channel 262C1 allotment at Harkers Island, North Carolina, will open on June 19, 1992, and close on July 20, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-40, adopted April 22, 1992, and released May 4, 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. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422. Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is

amended by adding Pine Knoll Shores, Channel 272A, and by adding Harkers Island, Channel 262C1.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-10786 Filed 5-7-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-251; RM-6826]

Radio Broadcasting Services; Chester, Kingstree, Wedgefield, and Summerton, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Chester County Broadcasting Corporation, licensee of Station WDZK-FM, Chester, South Carolina, and Davidson Communications, Inc., licensee of Station WWKT, Kingstree, South Carolina, substitutes Channel 257C3 for Channel 257A at Chester, modifies Station WDZK-FM's license to specify the higher class channel, substitutes Channel 257C3 for Channel 252A at Kingstree, and modifies Station WWKT's license to specify the higher class channel. To accommodate the allotments at Chester and Kingstree, Channel 238A is substituted for Channel 257A at Wedgefield, South Carolina, the license of Station WIBZ(FM) is modified to specify the alternate Class A channel, and Channel 252A is substituted for unoccupied but applied-for Channel 238A at Summerton, South Carolina. See 56 FR 42967, August 30, 1991, and Supplementary Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-251, adopted April 24, 1992, and released May 4, 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. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Channel 257C3 can be allotted to Chester in compliance with the Commission's minimum distance separation requirements at the transmitter site specified in Station WDZK-FM's license, at coordinates North Latitude 34-47-29 and West Longitude 81-16-01. Channel 257C3 can be allotted to Kingstree with a site restriction of 12.7 kilometers (7.9 miles) west to avoid a short-spacing to Station WMYB, Channel 258C3, Socastee, South Carolina, at coordinates 33-42-00; 79-57-30. The coordinates for Channel 238A at Wedgefield are 33-51-14; 80-31-47. Channel 252A can be allotted to Summerton with a site restriction of 4.5 kilometers (2.8 miles) southeast and can be used at the transmitter sites specified in the pending applications, at coordinates 33-35-06; 80-22-05.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by removing Channel 257A and adding Channel 257C3 at Chester, removing Channel 252A and adding Channel 257C3 at Kingstree, removing Channel 238A and adding Channel 252A at Summerton, and removing Channel 257A and adding Channel 238A at Wedgefield.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-10788 Filed 5-7-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-525; RM-7120, RM-7273]

Radio Broadcasting Services; Harker Heights, Llano, and Temple, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 288C2 for Channel 288A at Harker Heights, Texas, and modifies for the license of Station KLFX, Harker Heights, Texas, to specify operation on Channel 288C2. The reference coordinates for the Channel 288C2 allotment at Harker Heights, Texas, are 30-55-58 and 97-23-40. This document also dismisses a counterproposal by Templetown Communications for a Channel 286A allotment at Temple, Texas, and denies a counterproposal by Maxagrid, Inc. for a Channel 285C2 upgrade at Llano, Texas. *See* 54 FR 50628, published December 8, 1989. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-525, adopted April 15, 1992, and released May 4, 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. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Texas by removing Channel 288A and adding Channel 288C2 at Harker Heights.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-10785 Filed 5-7-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-14; RM-7884]

Radio Broadcasting Services; Ashland, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 227C1 to Ashland, Wisconsin, as that community's second FM broadcast service in response to a petition filed by the Phoenix Group. See 57 FR 4859, February 10, 1992. There is a site restriction 8.5 kilometers (5.3 miles) northwest of the community. Canadian concurrence has been obtained for this allotment at coordinates 46–39–30 and 90–56–00. With this action this proceeding is terminated.

DATES: Effective June 15, 1992. The window period for filing applications for Channel 227C1 will open on June 16, 1992, and close on July 16, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–14, adopted April 15, 1992, and released May 1, 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. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 227C1 at Ashland.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–10781 Filed 5–7–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[PR Docket No. 91–62; FCC 92–196]

Eligibility in the Motion Picture Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commissions expands the eligibility criteria for the Motion Picture Radio Service and renames that service the Video Production Radio Service to reflect the broader eligibility. Eligibility includes, for example, diverse entities engaged in on-location film production, such as the videotaping or filming of television programs or motion pictures produced for final distribution to motion picture theaters, television, or other mass communications outlets.

EFFECTIVE DATE: June 8, 1992.

FOR FURTHER INFORMATION CONTACT: Tatsu Kondo, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 91–62, FCC 92–196, adopted April 21, 1992, and released May 1, 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. The full text of this decision may also be purchased from the Commission's copy contractor, Downtown Copying Center, 1114 21 St., NW., Washington, DC 20036, (202) 452–1422.

Summary of the Report and Order

1. By a Notice of Proposed Rule Making in PR Docket No. 91–62, 6 FCC Rcd 1966 (1991), 56 FR 15314 (April 16, 1991), the Commission proposed to expand the eligibility provisions of the Motion Picture Radio Service ("MPRS"), which are set forth in § 90.69(a) of the Commission's Rules. The Motion Picture Radio Service authorizes persons engaged in the production of motion pictures to use radio frequencies for production coordination to protect life and property during the on-location filming of motion pictures produced for distribution to movie theaters.

2. The use of radio frequencies to assist motion picture production was first authorized by the Radio Act of 1927. In 1937, the Commission clarified the rationale behind establishing the Motion Picture Radio Service. Eligibility for this service has not been altered since that time. As stated in the notice, we believe that eligibility for the Motion Picture Radio Service should be expanded to include technologies and services developed since the MPRS was created more than 50 years ago.

3. In this Report and Order, we expand the eligibility criteria for the Motion Picture Radio Service and rename that service the Video Production Radio Service ("VPRS") to reflect the broader eligibility. Eligibility now includes diverse entities engaged in on-location film production, such as the videotaping or filming of television programs or motion pictures produced for final distribution to motion picture theaters, television, or other mass communications outlets. Eligibility is also extended to those entities producing educational or training films not produced for movie theaters, television, or other distribution outlets. Eligibility is further extended to those entities providing supporting services to VPRS eligibles.

4. Accordingly, it is ordered that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 CFR §§ 4(i) and 303(r), 90.69(a) of the Commission's Rules is amended June 8, 1992.

5. It is further ordered that this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rule

Part 90 of title 47 of the Code of Federal Regulations is amended as follows.

PART 90—[AMENDED]

1. The authority citation for part 90 would continue to read as follows:

Authority: Sections 4, 303, 331, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.69 is amended by revising the section heading and paragraph (a) to read as follows:

§ 90.69 Video Production Radio Service.

(a) Eligibility. The following are eligible to hold authorizations in the Video Production Radio Service to operate radio stations for transmission of communications essential to such activities of the licensee.

(1) Persons primarily engaged in the production, videotaping or filming of motion pictures or television programs, such as movies, programs, news programs, special events, educational programs or training films, regardless of whether the productions are prepared primarily for final exhibition at theatrical outlets or on television or for distribution through other mass communications outlets. Television or cable entities that are eligible to be licensed under part 74 or 78 of the Rules are not eligible to use the Video Production Radio Service:

(i) To transmit programming (see § 90.415),

(ii) To coordinate the live transmission of an event, or

(iii) To coordinate the taping of an event, where the taped material is to be transmitted to the public within 48 hours.

(2) Persons providing services in support of eligibles in the Video Production Radio Service.

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[FR Doc. 92-10646 Filed 5-7-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-207]

Motor Carrier Interstate Transportation—From Out-of-State Through Warehouses to Points in Same State

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: This policy statement reviews established guidelines for motor carriers and shippers to determine the interstate or intrastate nature of for-hire motor traffic moving from warehouses or similar facilities to points in the same State after or preceding a movement from another State.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Felder, (202) 927-5610 (TDD for the hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: This policy statement enumerates the criteria that determine whether certain traffic is interstate or intrastate and considers various factors that affect that determination. It is designed to assist carriers and shippers facing challenges from State regulatory authorities. These challenges persist despite an unbroken string of Commission, Federal Court and Supreme Court decisions explaining the difference between interstate and intrastate trucking services provided within a single State.[1] This statement is derived from those decisions.

Carriers and shippers may use this statement to determine if property, temporarily stored in a warehouse or distribution center before moving to its final destination, moves in interstate commerce rather than intrastate commerce. Interstate traffic must move by Commission-regulated motor carriers under applicable interstate rates and charges unless it is unregulated or exempt from regulation.[2] Intrastate traffic moves under applicable State statutes.

The traffic usually called into question by State regulatory authorities falls within the following pattern. Various types of property ("merchandise") is moved in interstate (or foreign) commerce from points outside a State to in-State warehouses or distribution centers. The shipper may or may not know the specific, ultimate consignee at the time the shipment leaves its out-of-State origin, but the shipper intends that the merchandise move beyond the warehouse. After storage at the warehouse or distribution center, the merchandise is tendered to a for-hire motor carrier for transportation within the State to the ultimate consignee. If the transportation continues in interstate commerce, only those carriers holding interstate authority may provide it.

If the merchandise comes to rest in a manner sufficient to break the continuity of the original interstate commerce, then subsequent transportation within the State by for-hire carriers may constitute transportation in intrastate commerce subject to applicable State regulation. The essential and controlling element in determining whether the traffic is properly characterized as interstate is whether the shipper has a "fixed and persisting intent" to have the shipment continue in interstate commerce to its ultimate destination. If this intent is present, the interstate character of the traffic is not changed simply because the merchandise may move through a warehouse or terminal facility on the way to its ultimate destination. Where a distribution center or warehouse serves only as temporary storage to permit orderly and convenient transfer of goods in the course of what the shipper intends to be a continuous movement to destination, the continuity of the movement is not broken at the warehouse.

Whether the shipper has a "fixed and persisting intent" that the merchandise continue in interstate or foreign commerce from or to an out-of-State origin or destination, via a warehouse or distribution center, is ascertained from all the facts and circumstances surrounding the transportation. In this regard, the following factors have been

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[1] *See, e.g., Texas & N.O.R.R.* v. *Sabine Tram Co.*, 227 U.S. 111, 122 (1913). Whether transportation between two points in a State is interstate or intrastate in nature depends on the "essential character" of the shipment. *Baltimore & O.S.W.R.R.* v. *Settle*, 260 U.S. 166, 170 (1922). Crucial to the determination of the essential character of a shipment is the shipper's fixed and persisting intent at the time of shipment. *Armstrong, Inc.—Transportation within Texas*, 2 I.C.C.2d 63 (1986) *(Armstrong)* [petition to reopen denied by decision (not printed), served August 31, 1987], *aff'd sub nom. Texas* v. *ICC*, 866 F.2d 1546 (5th Cir. 1989) *(Texas)*. The court upheld the Commission's finding that the shipper's intent was sufficient for the shipment to be regarded as interstate. *Middlewest Motor Freight Bureau* v. *ICC, 867 F.2d 458 (8th Cir. 1989), affirming our decisions in No. MC-C-10999, Matlack, Inc.—Transportation within Missouri—Petition for Declaratory Order* (not printed), served June 17, 1987 and December 31, 1987 *(Matlack)*, which found that certain single-State movements had not come to rest at the storage point prior to the time of reshipment, and, thus, that the temporary storage "did not interrupt the continuity of the original movement in interstate commerce." *Quaker Oats Company-Transportation within TX and CA*, 4 I.C.C.2d 1033 (1987), petition to reopen denied, 4 I.C.C.2d 1052 (1988), *aff'd sub nom. California Trucking Ass'n, et al.* v. *ICC*, 900 F.2d 208 (9th Cir. 1989) *(Quaker Oats)* the outbound single-State movement of goods from warehouses both owned by Quaker and public warehouse space leased by Quaker is part of Interstate transportation based on the shipper's fixed and persisting intent. The court also affirmed the Commission's determination that the use of brokers retained by the shipper; a switch in carriers or transportation modes at a distribution facility; and the single-State leg of the movement by private or exempt carrier does not alter the continuing interstate nature of the movement. No. MC-C-30002, *Victoria Terminal Enterprises, Inc.—Transportation of Fertilizer within Texas—Petition for Declaratory Order* (not printed), served December 15, 1987 *(Victoria Terminal I)*; administrative appeal (not printed) served April 29, 1988 *(Victoria II)*; reopened (not printed) served February 3, 1989 *(Victoria III), aff'd sub nom. Central Freight Lines* v. *ICC*, 899 F.2d 413 (5th Cir. 1990). Single-State movements after transportation by a for-hire exempt carrier is subject to ICC licensing jurisdiction. The court stated, "If the essential character of the transportation, as determined by the shipper's intent, is interstate, we do not see how that interstate character changes when one leg of the journey is performed by a carrier that happens to be exempt from ICC regulation." No. MC-C-30044, *James River Corporation of Virginia—Transportation Through Woodland, CA—Petition for Declaratory Order* (not printed), served July 15, 1988 *(James River) aff'd sub nom. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America* v. *ICC*, 921 F.2d 904 (9th Cir. 1990). The essential character of the transportation does not change when one leg of the journey is performed by an exempt carrier, and the Commission's ability to interpret statutory language conflicts is not limited by the Supreme Court's decision in *Maislin Industries U.S., Inc. et al.* v. *Primary Steel, Inc.*, 493 U.S. 1041 (1990), except when such interpretations conflict with well-established Supreme Court precedents. No. MC-C-30152, *Willbanks Steel Corporation* v. *The Squaw Transit Company and Motor Carrier Audit & Collection Co., A Division of Delta Traffic Services, Inc.* (not printed), served October 27, 1989 *(Willbanks)*. The method by which the shipper's product moves from dockside to the port warehouse by non-regulated motor carrier does not affect the continuous movement in foreign commerce. No. MC-C-30129, *Pittsburgh-Johnstown-Altoona Express, Inc.—Petition for Declaratory Order* (not printed), served February 12, 1990 *(PJAX)*; petition to reopen filed May 31, 1990 (decision pending). The nature of the subsequent motor movement is not affected by whether the initial movement across State lines is in regulated, private, or other carriage.

[2] *PJAX* at 12.

considered in establishing that the in-State for-hire motor transportation component is part of a continuing movement in interstate commerce, and hence subject to this Commission's regulation.

Although the shipper does not know in advance the ultimate destination of specific shipments, it bases its determination of the total volume to be shipped through the warehouse on projections of customer demand that have some factual basis, rather than a mere plan to solicit future sales within the State. The factual basis for projecting customer demand may include, but is not limited to, historic sales in the State, actual present orders, relevant market surveys of need.

No processing or substantial product modification of substance occurs at the warehouse or distribution center. However, repackaging or reconfiguring (secondary packaging) may be performed. This Commission and the U.S. Court of Appeals for the Fifth Circuit have found, for example, that cutting carpeting from large rolls for further distribution constitutes repackaging or reconfiguring rather than product modification.[3]

While in the warehouse, the merchandise is subject to the shipper's control and direction as to the subsequent transportation.

Modern systems allow tracking and documentation of most, if not all, of the shipments coming in and going out of the warehouse or distribution center. The shipper or consignee must bear the ultimate payment for transportation charges even if the warehouse or distribution center directly pays the transportation charges to the carrier.

The warehouse utilized is owned by the shipper. The shipments move through the warehouse pursuant to a storage in transit provision.

The case law establishes that the absence of time limitations on storage and the absence of storage-in-transit receipts issued by the warehouse or distribution center are not sufficient to establish that the continuity of interstate commerce is broken at the warehouse. Conversely, the presence of one or more of the following factors is not sufficient to establish a break in that continuity that would change the interstate character of the subsequent transportation.

The shipper's lack of knowledge of the specific, ultimate destination or consignee at the time the shipment leaves its out-of-State origin;

Separate bills of lading for the inbound and outbound movements instead of through bills of lading; Storage-in-transit tariff provisions; Storage receipts issued by the warehouse distribution center;

Time limitations on storage;

Payment of transportation charges by warehouse or distribution center, when the shipper or consignee is ultimately billed for these charges;

Routing of the outbound shipment by the warehouse or distribution center;

A change in carriers or transportation modes at a distribution facility;

Use of brokers retained by the shipper;

Use of a warehouse not owned by the shipper.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Under the terms of the Regulatory Flexibility Act, this restatement of the legal basis for our jurisdiction over certain transportation movements is not an action that will have a significant impact on a substantial number of small entities.

Authority: 5 U.S.C. 554(d); 49 U.S.C. 10521, 10922, and 10923.

Decided: April 27, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-10945 Filed 5-7-92; 8:45 am]

BILLING CODE 7035-01-M

[3] *Texas*, 866 F.2d at 1560-61.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Threatened Status for Three Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines three plants from the Florida panhandle to be threatened species pursuant to the Endangered Species Act of 1973 (Act), as amended. They are: *Euphorbia telephioides* (Telephus spurge, spurge family), *Macbridea alba* (white birds-in-a-nest, mint family), and *Scutellaria floridana* (Florida skullcap, mint family). The plants occur in four counties in the Florida panhandle. All three species are threatened by habitat degradation due to lack of prescribed fire and by forestry practices. *Euphorbia telephioides* is also threatened by real estate development in its habitat. This final rule implements the protection and recovery provisions afforded by the Act for the three plants.

EFFECTIVE DATE: June 8, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone: 904-791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

These three plant species were described by A.W. Chapman (1860), a physician and distinguished botanist of Apalachicola, Florida.

Euphorbia telephioides is a member of the spurge family (Euphorbiaceae). Small (1933) split the huge genus *Euphorbia* into smaller genera, renaming this species *Galarhoeus telephioides*. Webster (1967) established a new subsection of the genus *Euphorbia*, Inundatae, that includes *Euphorbia telephioides* and two other species native to the Florida panhandle: *Euphorbia floridana* and *E. inundata*.

Euphorbia telephioides is a perennial herb with a stout storage root. Stems and numerous, giving the plant a bushy appearance, up to 30 centimeters (1 foot) tall. Stems and leaves are smooth and have latex (milky sap). The largest leaves are 3-6 centimeters (1-2 inches) long, elliptic or oblanceolate, with the midrib and margins usually maroon. The inflorescence is a cyathium (a structure resembling a flower, containing a single stalked female flower and several male flowers, each reduced to a single stamen). Flowering is from April through July (Kral 1983). Clewell (1985) and Kral (1983) provide guidance for distinguishing this species from the most similar species, *Euphorbia inundata*, a taller plant of moister habitats.

Euphorbia telephioides is known from only 22 sites (Florida Natural Areas Inventory (FNAI) 1989; D. White, FNAI, pers. comm., 1990), all within 4 miles of the Gulf of Mexico (FNAI 1989; D. White, *in litt.*, 1990). The plant occurs in Bay, Gulf, and Franklin Counties from Panama City Beach to east of Apalachicola.

The genus *Macbridea* belongs to the mint family (Lamiaceae or Labiatae). The genus consists of two species (Kral 1983, Godfrey and Wooten 1981). *Macbridea alba* was first collected about 1860 by A.W. Chapman and a friend named Gausman (Roger Sanders, Fairchild Tropical Garden, *in litt.*, 1977). *Macbridea alba* is an upright, usually

single-stemmed, odorless perennial herb with fleshy rhizomes. It is about 30–40 centimeters (1 foot) tall with opposite leaves up to 10 centimeters (4 inches) long, 1–2 centimeters (0.5–1 inches) broad, with winged petioles. With one exception, all the plants at a site are either smooth or hairy (L. Anderson, Florida State University, pers. comm., 1990; Anderson *in* FNAI 1989). The flowers are clustered at the top of the plant in a short spike with bracts. Each flower has a green calyx about 1 centimeter (0.5 inch) long and a brilliant white corolla 3 centimeters (1 inch) long. The corolla is two-lipped, the upper lip hoodlike. Flowering is from May into July (Kral 1983, Godfrey and Wooten 1981). In flower, *Macbridea alba* is conspicuous and unmistakable. The other species in the genus, *Macbridea caroliniana*, has rose-purple flowers (Kral 1983) and is a candidate for Federal listing (55 FR 6184).

The range of *Macbridea alba* is in Bay, Gulf, Franklin, and Liberty Counties, Florida. The Apalachicola National Forest has the most vigorous populations, with the largest numbers of individuals of this species. The Florida Natural Areas Inventory surveys show the Forest as having 41 of the 63 known sites for the plant, although this number may be misleading because the FNAI divided patches of *Macbridea alba* into occurrences recognizing the Forest Service's compartment/stand system of parcelling the land into small management units (D. Hardin, *in litt.*, 1991). This resulted in a higher count of occurrences (sites) in the National Forest than would have been the case on private land. Revisits to *Macbridea* sites in the National Forest in 1990 yielded different stem counts than in 1987, much lower at some sites, higher at others (J. Walker, *in litt.*, 1991).

Scutellaria floridana is a member of the mint family. Chapman's (1860) treatment of this plant was upheld by Epling (1942). It is a perennial herb with swollen storage roots. Its stems are quadrangular and sparingly branched, solitary or in small groups. The leaves are opposite, 2–4 centimeters (1–1.5 inches) long, linear, with the margins strongly inrolled and a blunt, purplish tip. The flowers are solitary in the axils of short leafy bracts. Flower stalks are 5 mm (0.2 inches) or less long. The flower has a bell shaped calyx with a cap or "scutellum" on its upper side. The corolla is bright lavender-blue, at least 2.5 centimeters (1 inch) long, with a throat and an upper and lower lip. The lower lip is white in the middle. Flowering is in May and June (Kral 1983). The Florida panhandle has eight other species of *Scutellaria* (Clewell 1985).

Scutellaria floridana is presently known from 11 sites in Gulf, Franklin, and Liberty Counties, Florida, including 5 sites in Apalachicola National Forest (FNAI 1989; D. White, *in litt.*, 1990). The plant is not nearly as widespread in Apalachicola National Forest as *Macbridea alba* (J. Walker, USDA Forest Service, Tallahassee, pers. comm., 1990).

These three plant species are restricted to the Gulf coastal lowlands near the mouth of the Apalachicola River, roughly from the southwestern part of Apalachicola National Forest west to the vicinity of Panama City. The three plant species inhabit grassy vegetation on poorly drained, infertile sandy soils. The wettest sites occupied by these plants are grassy seepage bogs on gentle slopes at the edges of forested or shrubby wetlands. Less permanently wet sites are savannahs (also spelled savanna; also called grass-sedge bogs or wet prairies) (Frost et al. 1986), which are nearly treeless and shrubless but have rich floras of grasses, sedges, and herbs. All three species occur in seepage bogs and savannahs. "*Scutellaria [floridana]* is most commonly found in seepage bog communities or savannahs near the edges of included wetlands such as bay stringers. Its habitat requirements are more restricted than those for *Macbridea*." (J. Walker, *in litt.*, 1991). *Macbridea alba* occurs sparingly on drier sites with longleaf pine and runner oaks (mesic flatwoods) (J. Walker, USDA Forest Service, pers. comm., 1990). *Euphorbia telephioides* also occurs in scrubby oak vegetation near the shoreline of the Gulf of Mexico (FNAI 1989).

The grassy understory of flatwoods (largely wiregrass, *Aristida stricta*) and grassy savannahs and bogs are maintained by frequent fires. Lightning fires usually occur during the growing season, and the region's history of human fire-setting (and suppression) is long and complex. The frequency and season of fire are very important to the plant species that make up the vegetation, but fire effects can be subtle and research is needed if fire management is to be applied scientifically to conserving the native flora (Robbins and Myers in preparation, Clewell 1986). Fire during the growing season can stimulate and/or synchronize flowering in many species (Platt et al. 1988), including *Macbridea alba* (J. Walker, pers. comm., 1990), although it is not yet clear whether this plant thrives better with growing or dormant season fires. "Observations suggest that *Scutellaria* is very dependent on fire; individuals etiolate and do not flower in sites unburned for even 3 years. *Scutellaria* responds positively and dramatically to growing season fire" (J. Walker, *in litt.*, 1991).

The Apalachicola region has many endemic (locally distributed) plant species, most of them native to savannahs, including *Cuphea aspera, Justicia crassifolia, Verbesina chapmanii, Lythrum curtissii*, and *Pinguicula ionantha* (violet butterwort). The coastal distribution of the endemic *Liatris provincialis* parallels that of *Euphorbia telephioides* (Anderson 1989). Savannahs resembling those of the Apalachicola area occur in the Cape Fear region of North Carolina (Walker and Peet 1985) and in coastal Alabama and Mississippi (Norquist 1984).

Savannahs become more valuable when they are planted to pine trees or converted to pasture. Before pines are planted, sites are typically prepared by bedding and other mechanical methods, which is destructive to these plants (Kral 1983). After site preparation, and for the first few years after a new crop of pines is planted, surviving native herbs often prosper. For example, all six sites where *Scutellaria floridana* was found in 1988 were in recently cutover or replanted pine plantations. Understory grasses and herbs on such sites are usually adversely affected by shading as pines grow taller (Kral 1983). Savannah plants often persist on road rights-of-way (for example, the endangered *Harperocallis flava*), power line rights-of-way (*Euphorbia telephioides*), or other areas where infrequent mowing or bush-hogging substitutes for fire.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the report as a petition in the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Euphorbia telephioides* and *Scutellaria floridana* were included in these documents as threatened species; *Macbridea alba* was considered endangered. On June 16, 1976, the Service published a proposed rule (41 FR 24524) to determine endangered status for some 1,700 U.S. vascular plant species, including *Macbridea alba*, for

which that status had been recommended by the Smithsonian report. This proposal was withdrawn in 1979 (44 FR 12382).

On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which designated *Euphorbia telephioides, Macbridea alba,* and *Scutellaria floridana,* as category 1 candidates (taxa for which the Service currently has on file substantial data on biological vulnerability and threats to support proposing to list them as endangered or threatened species). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed all three species to category 2 candidates (taxa for which data in the Service's possession indicate listing is possibly appropriate); the three species retained category 2 status in a notice of review published September 27, 1985 (50 FR 39526). The notice of review published on February 21, 1990 (55 FR 6184) made all three species category 1 candidates, based on field work conducted by Loran Anderson, Wilson Baker, and Angus Gholson in the Apalachicola National Forest in 1987 (D. White, *in litt.,* 1990) and outside the National Forest in 1988 (FNAI 1989). On December 18, 1990, the Service published a proposal to list the three plants as threatened species (55 FR 51936).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for these three species because the Service had accepted the 1975 Smithsonian report as a petition. In each October of 1983 through 1989, the Service found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the proposal to list these plants constituted the final petition finding.

Summary of Comments and Recommendations

In the December 18 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the "New-Herald", Panama City; "The Gulf County Breeze", Wewahitchka; the "Apalachicola Times"; and the "Calhoun County Record", Blountstown, all on January 10, 1991. The proposed rule's comment period was extended until August 26, 1991 (56 FR 37200, August 5, 1991) on request of several commentors who desired a public meeting (which was ultimately not held), to allow inclusion of information from the 1991 growing season, and to incorporate into the record several comments that were submitted late.

The Service received 3 letters acknowledging receipt of copies of the proposal and 13 comments. The USDA Forest Service, the Northwest Florida Water Management District, the Center for Plant Conservation, and one biologist supported listing the species. Listing the species as endangered, rather than threatened, was urged by the Florida Natural Areas Inventory, three biologists familiar with these plants, and a conservation organization. The Service's response to this and other issues raised by commentors are discussed below:

Issue: The Forest Service commented that current management for *Macbridea alba* and *Scutellaria floridana* is to protect them and their habitat, but incorporated a statement that "both are found in areas suitable for timber management, and currently acceptable management practices, such as intense mechanical treatments and target stocking densities, probably threaten the viabilities of both." Two other commenters were concerned that Forest Service management practices include intensive site preparation followed by high pine stocking densities, methods that have caused declines in these species on private lands. Listing the two plants as endangered will obligate the Forest Service to conserve them.

Service Response: The Endangered Species Act makes the same demands on Federal agencies for threatened species as it does for endangered ones. The Forest Service has a good record of dealing with other listed plants in the National Forests in Florida (*Harperocallis flava* and *Bonamia grandiflora*) and can reasonably be expected to conserve the habitat of the two newly-listed plants.

Issue: One comment pointed out that the proposal overstated the number of sites for *Macbridea alba* in the Apalachicola National Forest because a plant inventory conducted by the Florida Natural Areas Inventory listed "occurrences" (the Inventory's technical term) by stand/compartment (the Forest's management units). This procedure resulted in tabulating more occurrences than would have been the case on private land.

Service Response: The Service concurs with this comment.

Issue: One comment asked for an accounting of extirpated sites, especially for *Macbridea alba*. How many of the localities where *Macbridea* was collected over the years are still extant? How many were searched for in recent surveys, and how many were so vague as to be unlocatable?

Service Response: The older records of *Macbridea alba* (mostly information from labels on herbarium specimens) generally lack information on population sizes. Judging whether populations in commercial pineland are still extant is difficult because *Macbridea alba*, in commercial pinelands, is usually in evidence at the time of site preparation and replanting, and difficult to find at other times. As a result, the existing data from private land do not, by themselves, document changes in abundance of this plant. However, competent filed botanists who have observed the area for many years consider *Macbridea* to be declining and *Macbridea alba* is clearly thriving better in the National Forest than on private land.

Issue: One comment pointed out that the purpose of the Endangered Species Act (Section 2(b)) is to conserve the ecosystems upon which endangered species and threatened species depend, and asked how many sites for *Macbridea alba* or *Euphorbia telephioides* are in native ecosystems, outside pine plantations or roadsides?

Service Response: The stated purpose of the Act to conserve ecosystems is not directly incorporated into the criteria for listing species as endangered or threatened (Section 4). A species that is secure in artificial or altered habitats does not qualify for listing. However, the security of plants in artificial habitats is often questionable because habitat management can change; e.g. herbicide use is a concern on road rights-of-way. Most of the known plants of *Macbridea alba* and *Scutellaria floridana* are in native vegetation, modified for timber production. For *Euphorbia telephioides*, 5 of 22 known sites (including the site with the most individuals) are on rights-of-way.

Issue: A forest products company noted that these plants occur on land recently disturbed by forestry site preparation and perhaps by treefalls from hurricanes, and that the plants tend not be be seen in less disturbed areas; this raises concerns over how to

protect such ambulatory plants and raises questions about whether the listing proposal was based excessively on assumptions about the life cycles of these plants.

Service Response: The scientific data on effects of forestry practices on these and other native herbs are sketchy. It is possible that the three plants maintain "seed banks" of viable seed in the soil that germinate when disturbance exposes bare mineral soil, or that individuals repressed by shade or competition flower if neighboring trees or understory plants are removed. However, seed banking is well known in *Rhexia* (meadow beauty), which is abundant in savannahs and road edges (R. Kral, pers. comm., 1991), and extensive seed banking by the three plants would probably have been noticed by field botanists. It appears more likely that *Macbridea alba* and *Scutellaria floridana* thrive best with relatively little ground disturbance and frequent fire, conditions that can be provided more readily for the plants on Forest Service than on private land.

Issue: The same forest products company was concerned that listing these species as threatened could force the cessation of silvicultural activities within their ranges, causing a major economic impact.

Service Response: The Act does not protect plants on private land from landowners' activities (except for activities that require Federal permits, such as use of herbicides). Listing under the Act is intended to encourage states and local governments to take actions to protect plant species; Florida has State land acquisition programs and has incorporated plant conservation measures in its comprehensive planning program and in its regulation of large real estate developments. Florida law does not protect plants from the effects of silviculture.

Issue: The Florida Natural Areas Inventory submitted a table comparing the FNAI's global rankings and numbers of occurrences for the three Apalachicola plant species with those for Federally listed species native to scrub vegetation in central Florida. The three species are all ranked as globally endangered (FNAI's most threatened category), and the numbers of element occurrences ("sites") for the three plants and the Central Florida endangered plants are similar. The three plants are also listed as endangered by the State of Florida. FNAI commented that habitat threats appear at least as severe in the Apalachicola area as in central Florida scrub, and that consistency in listing requires the three Apalachicola plants to be given endangered status.

Service Response: Although botanical survey information for the lower Apalachicola area (where the three proposed plants occur) is very good, surveys of the central Florida scrub flora are more complete, partly because of the limited total area of central Florida scrub, partly because the scrub plants are likely to flower every year without the stimulus of fire. In addition, the threat to central Florida scrub is simple—scrub is cleared to make way for agriculture or development. In the lower Apalachicola flatwoods, forestry practices generally do not immediately extirpate the grass and herb flora, so plant species may persist for a long time. For these reasons, the Service believes, pending further evidence of threat, that these plants best fit the Act's definition of "threatened' species.

Issue: One comment suggested that the final rule should use the technical term "occurrence" as used by the Florida Natural Areas Inventory rather than the vernacular "site".

Service Response: "Occurrence", used as a technical term, has a different meaning than found in dictionaries. "Site" is less likely to cause misunderstanding.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that all three species should be classified as threatened. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Euphorbia telephioides* Chapman (Telephus spurge), *Macbridea alba* Chapman (white birds-in-a-nest), and *Scutellaria floridana* Chapman (Florida skullcap) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Destruction of habitat is most important for *Euphorbia telephioides* because its entire distribution is within four miles of the Gulf coast, where rapid development is expected. Planned road construction in the Panama City Beach area may destroy *Euphorbia telephioides* habitat (Fish and Wildlife Service, Panama City, Florida, *in litt.*, 1991). "* * * Coastal development in the lower Apalachicola river and Apalachicola Bay will dramatically increase over the next several years due to the approval of a golf resort community development plan and general upgrade of infrastructure including airports, sewage treatment facilities, and water facilities * * *" (D.J. Cairns, Bureau of Environmental Management & Resource Planning, Northwest Florida Water Management District, *in litt.*, 1991).

All three species occur adjacent to the town of Port St. Joe, so expansion of the town would affect them as well as the endangered Chapman rhododendron, *Rhododendron chapmanii*, which occurs in the same vicinity. Development of improved cattle pastures probably has destroyed habitat of these species (Kral 1983), but documentation of the extent of such habitat loss is not available.

All three species are affected by habitat modification by the forest products industry to plant and harvest slash pine (and by the Forest Service to plant longleaf pine). Site preparation that precedes tree planting may destroy these plants (Kral 1983, FNAI 1989), although populations of these species may recover in the sunny conditions that prevail for several years in young pine stands. Shading of these plants by neighboring grasses and by pine trees after canopy closure probably affects these plants seriously (Kral 1983, FNAI 1989), although long-term data are not available.

Landowner liability for fire discouraged prescribed burning of pinelands in Florida, and lack of prescribed fire may have adversely affected these three plants. The Florida legislature addressed this problem by passing a new law encouraging prescribed burning in 1990. Prescribed fire has generally been applied in the dormant season, but much of the pineland flora would thrive better under a regime of growing season burns (Robbins and Myers in prep.; Platt et al. 1988). It is not yet clear whether *Macbridea alba* prefers dormant or growing season fires (J. Walker, *in litt.*, 1991). *Scutellaria floridana* reacts positively to growing season fire and appears to require fire to remain vigorous. Additionally, *Scutellaria floridana* usually grows at wetlands interfaces at "stand edges where the impact of fire line plowing is disproportionately high. Fire line construction can destroy habitat directly, or indirectly by excluding future prescribed fires. Because * * * the potential for woody plant encroachment is high, growing season fire to control hardwoods is especially important." (J. Walker, USDA Forest

Service, *in litt.*, 1991). Because fire is essential to maintain both *Scutellaria floridana* and its habitat, it must be assumed that the lack of prescribed fire constitutes a threat to this species.

Power line rights-of-way provide habitat for these three species, especially *Euphorbia telephioides* in Franklin County (FNAI 1989). On such rights-of-way, use of herbicides to control the vegetation, rather than bush-hogging or mowing, could adversely affect *Euphorbia telephioides* and the other species.

The recorded occurrences of *Macbridea alba* (FNAI 1989; D. White, *in litt.*, 1990) provide evidence that this species has declined in most of its range. Although the plant occurs in 4 counties, 41 of its 63 reported localities are in the Post Office Bay area of Apalachicola National Forest, within 15 miles of each other (about 10 more sites have been located in the Apalachicola National Forest since then (J. Walter, *in litt.*, 1991)). Ten of the 13 sites with at least 100 *Macbridea alba* plants were in the National Forest, including the largest site with an estimated 1500 plants. The present distribution of existing *Macbridea* plants indicates that *Macbridea alba* has declined severely outside the National Forest, because it is unlikely that the National Forest originally had the most, or the largest populations of *Macbridea alba*. The National Forest is at the edge of this plant's range and areas southwest of the National Forest have richer floras of endemic plants. The present distribution and abundance of *Macbridea alba* is consistent with Godfrey's (1979) assertion that "modern forestry practices are destroying this species," and Kral's (1983) opinion that drainage, lack of fire, and mechanical site preparation for tree planting reduces or eliminates this and other species including *Verbesina chapmanii, Justicia crassifolia, Scutellaria floridana,* and *Cuphea aspera. Scutellaria floridana* is a rarer plant than *Macbridea alba*, so forestry activities would seem to affect it more seriously.

The Forest Service conducts some prescribed burns during the growing season to reduce the incidence of brown-spot infection of longleaf pine seedlings (Robbins and Myers in preparation). This practice may favor *Macbridea alba* and other herbs. Most private land is planted with slash pine, which is not burned in the seedling stage. Forest Service management practices are intended to benefit *Macbridea alba, Scutellaria floridana,* and other sensitive species including the endangered *Harperocallis flava*, but management to date has been based on casual observation rather than scientific monitoring to observe whether practices actually benefit the plants (J. Walker and D. White, pers. comm., 1990).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known. *Macbridea alba* has handsome flowers, but it is apparently not cultivated, nor is it known to be taken in the Apalachicola National Forest (where taking of spider lilies has recently been observed in the same habitat) (J. Walker, Forest Service, pers. comm., 1990).

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

All three species are listed as endangered species under the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes), which regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act will provide additional protection through sections 7 and 9, and through recovery planning.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The limited geographic distributions of these plants, and the uniformity of habitat alteration practices through most of the ranges of these plants exacerbate the risks posed to the three species by the preceding four factors, making it possible that unless conservation measures are taken, each species might become extinct in a significant portion of its range in the foreseeable future.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Euphorbia telephioides, Macbridea alba*, and *Scutellaria floridana* as threatened. As discussed under Factor E., each of these species is likely to become extinct in a significant portion of its range within the foreseeable future, fitting the Act's definition of a threatened species. Endangered classification would not be appropriate because none of the species is in imminent danger of extinction, having at least short-term security due to the number of populations and their distribution over several counties. Additionally, two of the species receive some protection because they occur in the Apalachicola National Forest.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Most of the populations of these species are small and localized. Although none of the plants is presently known to be affected by take (as discussed for *Macbridea alba* under Factor B in the Summary of Factors Affecting the Species), listing these species as threatened could lead to collecting or deliberate destruction of populations; in the Orlando area, for example, there has been at least one instance of deliberate destruction of endangered plants by a landowner reacting to the prospect of plant conservation measures to be implemented as part of the Orange County comprehensive plan (Orlando Sentinel, May 19, 1991). Listing as threatened protects *Euphorbia telephioides, Macbridea alba* and *Scutellaria floridana* from removal and reduction to possession from lands under Federal jurisdiction; however, since the Act does not otherwise protect threatened plants on either Federal or private lands publication of critical habitat descriptions and maps would only add to the threats faced by these species. Furthermore, although the removal and possession of listed plants from Federal lands is prohibited, such provisions are difficult to enforce.

The Forest Service is aware of the locations of all populations of *Macbridea alba* and *Scutellaria floridana* on its lands, and other involved parties and principal landowners can be notified of the location and importance of protecting these species' habitat through several mechanisms, including Florida's system for protecting endangered and threatened species from pesticide application, and Florida's regional and local planning procedures. Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. For these reasons, it would not be prudent to determine critical habitat for *Euphorbia telephioides, Macbridea alba,* or *Scutellaria floridana.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for

Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The populations of *Macbridea alba* and *Scutellaria floridana* in Apalachicola National Forest are already managed with the intention of benefitting these and other sensitive plant species. Listing will encourage further research and management efforts by the Forest Service. On private lands, listing of these species will probably result in measures to ensure that they are not adversely affected by pesticide (especially herbicide) use under a state program approved by the Environmental Protection Agency. Listing of these plants will also encourage their conservation through Florida's planning procedures, supervised by the Florida Department of Community Affairs.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 for threatened plants, set forth a series of general prohibitions and exceptions for all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because the three species are not cultivated. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Euphorbiaceae—Spurge family:						
*	*	*	*	*	*	
Euphorbia telephioides	Telephus spurge	U.S.A. (FL)	T	463	NA	NA
*	*	*	*	*	*	
Lamiaceae—Mint family:						
*	*	*	*	*	*	
Macbridea alba	White birds-in-a-nest	U.S.A. (FL)	T	463	NA	NA
*	*	*	*	*	*	
Scutellaria floridana	Florida skullcap	U.S.A. (FL)	T	463	NA	NA
*	*	*	*	*	*	

Editorial Note: This document was received at the Office of the Federal Register on May 5, 1992.

Dated: January 22, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–10711 Filed 5–7–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Change in recordkeeping and reporting requirements.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that Daily Production Reports are no longer required from processor vessels and shoreside processing facilities that catch pollock and/or Atka mackerel in, or receive pollock and/or Atka mackerel from, the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands Management area (BSAI). Therefore, this requirement is rescinded. The intent of this action is to ensure optimum use of pollock and Atka mackerel stocks.

EFFECTIVE DATES: 00:01, Alaska local time (A.l.t.), May 7, 1992, through 24:00, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fisheries in the exclusive economic zone of the BSAI are managed by the Secretary of Commerce under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) that is subject to the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

Formerly, under § 675.5(c)(3)(i), the Regional Director required processor vessels and shoreside processing facilities that catch pollock and/or Atka mackerel in, or receive pollock and/or Atka mackerel from, the AI subarea, to submit Daily Production Reports in addition to weekly production reports (57 FR 2856, January 24, 1992).

The Regional Director has determined that these Daily Production Reports are no longer necessary. The requirement for these Daily Production Reports is rescinded effective 00:01, A.l.t., May 7, 1992.

Classification

This action is taken under § 675.5 and complies with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 4, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–10837 Filed 5–7–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 90
Friday, May 8, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AE86

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to redefine the survey area of the Puerto Rico appropriated fund wage area. The proposed change will improve the capability of the Department of Defense (DoD), the lead agency for the survey, to conduct the survey and will result in Federal Wage System (FWS) pay rates that are more representative of prevailing rates in the work locations of FWS employees in Puerto Rico.

DATES: Comments must be submitted on or before July 7, 1992.

ADDRESSES: Send or deliver written comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 606-2848 or (FTS) 266-2848.

SUPPLEMENTARY INFORMATION: The survey area for the Puerto Rico appropriated fund wage area consists of 13 municipios—9 in the San Juan area and 4 in the Ponce area. OPM is proposing that the survey area be redefined by deleting the four municipios in the Ponce area—Juana Diaz, Penuelas, Ponce, and Villalba Municipios—and adding Humacao Municipio.

The majority of FWS employees (54.1 percent) are located in the San Juan area. The second largest concentration of FWS employees (19.4 percent) is located at the host activity—Roosevelt Roads Naval Complex in Ceiba Municipio. The work locations of the remaining FWS employees (26.5 percent) are at scattered locations throughout the island. The Local Wage Survey Committee has indicated that fewer than 10 FWS employees work in the Ponce area.

The deletion of the four municipios in the Ponce area from the survey will improve DoD's capability to do the survey. The Ponce area is somewhat isolated from the host activity. Although the distance is not excessive, the highway transportation system linking Ceiba (Roosevelt Roads) to Ponce is inconvenient in terms of directness and quality. In addition, since few FWS employees now work in the Ponce area, there is no longer a compelling reason to survey prevailing rates there.

Based on results from the most recent full-scale survey, the Puerto Rico survey remains adequate when data obtained from establishments in the Ponce area are excluded. However, excluding the Ponce data reduces the number of adequate data points from 12 to 10—the minimum number required under OPM regulations. To remedy this situation, OPM is proposing that Humacao Municipio be added to the survey. Humacao is relatively close to the host activity and would pose significantly fewer survey capability problems than continuing to survey establishments in the Ponce area. A provisional survey of private sector establishments in Humacao, authorized by OPM and conducted at the same time as the recently completed full-scale regular survey, resulted in 24 establishments within scope and 10 firms providing data. Humacao provided sufficient matches to add one data point to the combined San Juan/Humacao survey, resulting in a total of 11 adequate data points.

OPM believes the proposed survey area changes will increase the capability of DoD to conduct the survey and better reflect prevailing rates in geographic areas where FWS employees work. The proposed change was reviewed by the Federal Prevailing Rate Advisory Committee and received its consensus support.

Executive Order 12291, Federal Regulation

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

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502.

2. Appendix C to subpart B is amended by revising the wage area listing for Puerto Rico to read as follows:

Appendix C To Subpart B of Part 532—Appropriated Fund Wage and Survey Area

* * * * *

PUERTO RICO

Survey Area

Puerto Rico (Municipios):

San Juan
Bayamon
Canovanas
Carolina
Catano
Guaynabo
Humacao
Loiza
Toa Baja
Trujillo Alto

Area of Application—Puerto Rico

* * * * *

[FR Doc. 92-10806 Filed 5-7-92; 8:45 am]

BILLING CODE 5325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AEA-02]

Proposed Alteration of Transition Area; College Park, MD

AGENCY: Federal Aviation Administratiion (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to modify the 700 foot Transition Area established at College Park, MD, due to a pending revision of an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD.

DATES: Comments must be received on or before June 1, 1992.

ADDRESSES: Send comments on the rule in triplicate to: George Dodelin, Manager, System Management Branch, AEA-530, Docket No. 92-AEA-02, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

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. 92-AEA-02". 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 both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA-7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the existing 700 foot Transition Area established at College Park, MD, due to a pending revision to an instrument procedure to Runway 15 at the College Park Airport, College Park, MD. The transition area description was republished n § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessry 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, when promulgated, this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

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 part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 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, 1992, and effective November 1, 1991, is amended as follows:

Section 71.181 Transition Areas

* * * * *

AEA MD TA College Park, MD [Revised]
College Park Airport, MD (lat. 38°58'50" N., long. 76°55'22" W.)

That airspace extending upward from the surface within a 6.4-mile radius of the College Park Airport and within 2 miles either side of a 303° (T) 313°(M) bearing extending from a point located at lat. 38°58'56" N., long. 76°55'29" W., extending northwest from said point and the 6.4-mile radius to 9.1 miles northwest of said point.

* * * * *

Issued in Jamaica, New York, on April 10, 1992.

Gary W. Tucker

Manager, Air Traffic Division.

[FR Doc. 92-10778 Filed 5-7-92; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

[Docket No. 46494; Notice No. 92-7]

14 CFR Part 255

RIN 2105-AB47

Computer Reservation System (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is considering whether to readopt and modify its existing rules governing computer reservations systems (CRSs) The Department initiated this rulemaking because its existing CRS rules (14 CFR part 255) would have expired on December 31, 1990, unless extended by the Department. The Department later extended that date to May 31, 1992. The Department, however, will be unable to complete a rulemaking on whether new CRS rules should be adopted by May 31, 1992. The Department has tentatively determined that the existing rules should be maintained until December 11, 1992, to enable the Department to complete the CRS rulemaking.

DATES: Comments must be submitted on or before May 15, 1992.

ADDRESSES: Comments must be filed in room 4107, Docket 46494, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Late filed comments will be considered to the extent possible.

FOR FURTHER INFORMATION CONTACT: Thomas Ray or Gwyneth Radloff, Office of the General Counsel, 400 7th St., SW., Washington, DC 20590, (202) 366–4731 or 366–9305, respectively.

SUPPLEMENTARY INFORMATION:

Introduction

The Department's rules governing computer reservations systems (CRSs) operating in the United States, 14 CFR part 255, were originally adopted by the Civil Aeronautics Board (the "Board") in 1984, and by their terms would have expired on December 31, 1990, unless renewed by us. (When the Board ceased to exist on December 31, 1984, we took over most of its remaining functions, including these rules.)

We began this proceeding to consider whether we should readopt the Board's CRS rules and, if so, whether we should change them, by issuing an Advance Notice of Proposed Rulemaking requesting comments on these issues. Advance Notice of Proposed Rulemaking, Computer Reservations Systems, 54 FR 38870 (September 21, 1989). Due to the parties' submission of a large number of comments, which raised difficult economic and policy issues, we could not complete the rulemaking by the original expiration date for the rules, December 31, 1990. We therefore extended that date to November 30, 1991. 55 FR 53149 (December 27, 1990).

We issued a notice of proposed rulemaking (NPRM) last year. 56 FR 12586 (March 26, 1991). We tentatively concluded that the rules should be readopted with several significant changes. We also asked for further information and analysis on several complex issues, such as the claim that the systems contain architectural bias giving their airline affiliates an unfair advantage in obtaining bookings from their travel agency subscribers.

Comments and reply comments on the NPRM were filed by the Justice Department, 16 states and one territory, the European Civil Aviation Conference, the CRS vendors and the carriers controlling the CRSs, six other U.S. airlines, 15 foreign airlines and airline groups, the two major travel agency trade associations, a number of travel agency and agent parties, and other persons and groups. Their views range from the position that no CRS rules are necessary to the position that much stronger rules than those proposed by us are necessary. After beginning our review of these filings, we determined to grant Northwest Airlines' motion asking us to require the vendors to submit data on the reliability of each system's functionality and communications links for transactions on non-vendor carriers. Order 91–8–63 (August 30, 1991). The required information and responses by other parties were filed in September and October 1991.

Because of the complexity of the issues presented by the comments and our decision to have the vendors submit information on the reliability of their systems and to allow the parties an opportunity to comment on those submissions, we were unable to complete the rulemaking by the revised expiration date of November 30, 1991. We therefore changed the termination date to May 31, 1992. 56 FR 60915 (November 29, 1991).

On January 28, 1992, the President announced that, in the national interest, he was requiring this Department, as well as other executive branch agencies, to examine existing regulations to see whether they provide benefits outweighing their burdens before any new regulations were adopted that could burden the private sector. His order established a 90-day moratorium on preparing new regulations (subject to certain exceptions). We determined that the moratorium covered this proceeding.

Need for Extending the Expiration Date

We will be unable to complete our rulemaking on whether the rules should be readopted, with or without changes, by May 31, 1992, the rules' current expiration date under § 255.10(b). The proposal is controversial, and difficult issues remain to be resolved. We therefore have tentatively determined to extend the rules' expiration date to December 11, 1992.

If we maintain the current rules in force until we complete this proceeding, we will prevent the disruption that would occur if the rules were allowed to expire and we later adopted similar rules governing CRS operations. The vendors, other airlines, and travel agencies have been operating according to the rules and on the assumption that other firms would do the same. If the rules expired, the vendors might well change their methods of operation, which would probably require other firms to change their operating methods as well, even though we might well readopt CRS rules at a later point. Rather than create the possibility for such disruption, we believe that we would benefit the vendors, the airlines, the travel agencies, and the public by preserving the status quo until we determine whether CRS rules are still necessary and, if so, which ones.

We recognize that Covia, the second-largest vendor, and one large travel agency filed comments in our docket on the President's regulatory review (docket 47978) arguing that the CRS rules should be terminated and that American Airlines, the largest vendor, has proposed eliminating some but not all of the rules. However, we tentatively determined in the NPRM that CRS rules remain necessary, and that view is shared by the large majority of parties in this proceeding, including the Department of Justice. We note, for example, that Alaska Airlines, America West Airlines, the Association of Retail Travel Agents, the Aviation Consumer Action Project, British Airways, the Consumer Federation of America, Continental Airlines, Delta Air Lines, KLM Royal Dutch Airlines, Northwest Airlines, System One Corporation, Trans World Airlines, and Worldspan filed a joint comment in the regulatory review docket arguing that CRS rules are still essential; the American Society of Travel Agents filed a comment supporting that joint comment. Furthermore, as part of the regulatory review required by the President, we reexamined the need for CRS rules and concluded that it was unlikely we would determine at the end of this proceeding that no CRS rules are necessary.

We are therefore proposing to change the expiration date of the current rules from May 31, 1992, to December 11, 1992. We hope to be able to complete the rulemaking by December 11, 1992.

Comments on this proposed extension of the termination date will be due seven days after publication of this notice. After considering the comments, we will issue a final rule. We find it necessary to provide only a seven-day

period for comments because a rule extending the termination date must be adopted by May 31. The short comment period should not prejudice any party, since parties have already had an opportunity to comment on the need for CRS rules by commenting on the NPRM (and the earlier Advance Notice of Proposed Rulemaking) and in the regulatory review docket. In addition, the extension of the current rules will merely maintain the statue quo. We also note that no one opposed the two earlier extensions of the expiration date and, as indicated, that few parties in this proceeding contend that we should let the rules expire.

Regulatory Impact Analysis

Executive Order 12291 requires each executive agency to prepare a regulatory impact analysis for every "major rule". The Order defines a major rule as one likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The CRS regulations appear to be a major rule, since they would probably have an annual impact on the economy of $100 million or more.

Our proposal to change the current rules' termination date to December 11, 1992, would keep in force the existing rules on CRS operations. When the Board conducted its rulemaking, it included a tentative regulatory impact analysis in its notice of proposed rulemaking and made that analysis final when it issued its final rule. In addition, our NPRM contained such a regulatory impact analysis, although that analysis was largely directed at the proposals made by the NPRM. We believe that the Board's analysis, as modified by the NPRM's analysis, remains applicable to our proposal to extend the rules' expiration date and that no new regulatory impact statement appears to be necessary. However, we will consider comments from any parties on that analysis before we make our proposal final.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, would have a significant economic impact on a substantial number of small business entities.

Postponing the rules' termination date to December 11, 1992, will not modify the existing regulation of small businesses. The Board's notice of proposed rulemaking contained an initial regulatory flexibility analysis on the impact of the rules, and the Board discussed the comments on that analysis in its final rule. The Board's analysis appears to be valid for our proposed extension of the rules' termination date. Accordingly, we will adopt the Board's analysis as our tentative regulatory flexibility statement. We will consider any comments filed on that analysis when we decide whether to adopt this proposal.

Paperwork Reduction Act

This proposal will not impose any collection-of-information requirements and so is not subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. chapter 35.

Federalism Implications

The rule proposed in this notice will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, we have determined that the proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects for 14 CFR Part 255

Air carriers, Antitrust, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation proposes to amend 14 CFR part 255. Carrier-owned Computer Reservation Systems, as follows:

PART 255—CARRIER-OWNED COMPUTER RESERVATIONS SYSTEMS

1. The authority citation for part 255 continues to read as follows:

Authority: Secs. 102, 204, 404, 411, 419, 1102; Public Law 85–726 as amended, 72 Stat. 740, 743, 760, 769, 797; 92 Stat. 1732; 49 U.S.C. 1302, 1324, 1374, 1381, 1389, 1502.

2. Section 255.10 is revised to read as follows:

§ 255.10 Review and termination.

Unless extended, this rule shall terminate on December 11, 1992.

Issued in Washington, DC on May 5, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 92–10903 Filed 5–6–92; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 355

[Docket No. 80N–0042]

RIN 0905–AA06

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Reopening of Administrative Record

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; reopening of administrative record.

SUMMARY: The Food and Drug Administration (FDA) is reopening the administrative record for the rulemaking for over-the-counter (OTC) anticaries drug products to include data and information in support of a request to increase the package size limitation for fluoride dentifrice drug products from not more than 260 milligrams (mg) of total fluorine per package to not more than 350 mg. This action is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by July 7, 1992.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 28, 1980 (45 FR 20666), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anticaries drug products, together with the recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. The Panel recommended a package size limitation of not more than 260

milligrams (mg) total fluorine for OTC fluoride dentifrices (45 FR 20666 at 20691).

The agency's proposed regulation, in the form of a tentative final monograph, for OTC anticaries drug products was published in the **Federal Register** of September 31, 1985 (50 FR 39854). In that proposed rule, the agency concurred with the Panel and proposed that OTC fluoride dentifrice packages be limited to not more than 260 mg total fluorine per package (50 FR 39854 at 39872). The agency also proposed that the fluoride ingredients included in OTC fluoride dentifrices be limited to percent concentrations that would be equivalent to 1,000 parts per million (ppm) theoretical total fluorine.

After publication of the tentative final monograph, in 1986 the agency approved a new drug application (NDA 19–518) for an OTC fluoride dentifrice containing 1,500 ppm theoretical total fluorine (Ref. 1). As part of the approval for the NDA, the agency increased the package size limitation from not more than 260 mg of total fluorine per package to not more than 350 mg to accommodate the increased amount of fluoride contained in this dentifrice.

Subsequently, the agency received a citizen petition (Ref. 2) requesting that the administrative record for this rulemaking be reopened and that the tentative final monograph for OTC anticaries drug products be amended to increase the dentifrice package size limitation from not more than 260 mg of total fluorine per package to not more than 350 mg in dentifrice products containing 1,000 ppm theoretical total fluorine. The request was based on the agency's approval of the increased package size under NDA 19–518, as discussed above. The petition included: (1) Published animal toxicology studies that were submitted as part of NDA 19–518, and (2) a statement from FDA's toxicology and pharmacology evaluation of NDA 19–518 in which the agency's reviewer concluded that a package size containing not more than 350 mg fluoride is safe.

FDA has carefully considered the request and believes that it would be appropriate to reopen the administrative record for the rulemaking for OTC anticaries drug products to include the data and information supporting the 350-mg total fluorine dentifrice package size. Based on the supporting toxicology data and the NDA approval, the agency tentatively plans to increase the package size limitation for fluoride dentifrices in § 355.20(a) of the final monograph for OTC anticaries drug products to not more than 350 mg total fluorine. However, the agency is not aware that any dentifrices other than the one product approved under an NDA are currently marketed in package sizes containing greater than 260 mg of total fluorine per package. Therefore, at this time, the agency recommends that manufacturers not implement this increased package size until the final monograph is issued. The agency is currently developing this final monograph. The agency considers that good cause exists, as stated in 21 CFR 330.10(a)(7)(v), at this time to consider new data and information concerning an increase in the dentifrice package size limitation from not more than 260 mg of total fluorine per package to not more than 350 mg.

Interested persons may on or before July 7, 1992, submit to the Dockets Management Branch (address above) written comments regarding increasing the dentifrice package size limitation from not more than 260 mg of total fluorine per package to not more than 350 mg. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Copy of FDA-approved labeling from NDA 19–518, OTC Volume 08LTPTFM, Docket No. 80N–0042, Dockets Management Branch.

(2) Comment No. CP4, Docket No. 85N–0554, Dockets Management Branch.

Dated: May 1, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–10737 Filed 5–7–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 750

[FHWA Docket No. 92–22]

RIN 2125–AC99

Removal of Nonconforming Signs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes to amend its regulations relating to the removal of nonconforming signs. The recently enacted Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) provides funding for the Federal share of just compensation for the acquisition of nonconforming signs. Consequently, the States are once again required to purchase nonconforming signs to comply with the Highway Beautification Act of 1965. This NPRM discusses several options for ensuring that the Senate provide an effective program for removing nonconforming signs.

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

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92–22, Federal Highway Administration, room 4232, HCC–10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Marlin E. Meese, Chief, Special Programs and Evaluation Branch, Office of Right-of-Way, HRW–12, (202) 366–2017; or Mr. Robert J. Black, Attorney, Office of Chief Counsel, HCC–31, (202) 366–1359, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Highway Beautification Act (HBA), Public Law 89–285, 79 Stat. 1028, which was passed in 1965, has always required that signs which are lawfully erected but do not conform to the HBA must be removed five years after the date they become nonconforming. This requirement is found in 23 U.S.C. 131(e). Section 131(n) provides for an exemption from this requirement to the extent that Federal funds have not been made available to participate in the cost of just compensation. The funding authorization for the HBA is contained in 23 U.S.C. 131(m).

Over the years, some $171 million have been made available from General Fund appropriations for removal of signs, and approximately 119,000 nonconforming signs have been removed. The FHWA estimates that about 92,000 nonconforming signs remain to be acquired. Most of these signs have been in place since 1965. Since 1983, no funds have been

authorized for removal of nonconforming signs.

On December 18, 1991, the ISTEA, Public Law 102–240, 105 Stat. 1914, was signed into law. Section 1046(a) of the ISTEA amended 23 U.S.C. 131(m), making funds apportioned under 23 U.S.C. 104 available to participate in the cost of outdoor advertising control. By this amendment, highway trust funds are now available for the removal of nonconforming signs, In addition, in section 1007 of the ISTEA, control and removal of outdoor advertising is identified as one of several "transportation enhancement activities" under the new Surface Transportation Program (STP). This major new program requires that at least 10 percent of apportioned funds for the program must be directed towards "transportation enhancement activities."

On March 6, 1992, the FHWA published a notice in the **Federal Register** at 57 FR 8167, hereafter called the March 6 notice, describing the impact of section 1046 of the ISTEA upon the existing State procedures for effective control of outdoor advertising. In the March 6 notice, the FHWA stated that it believed the ISTEA requires the States to begin immediate removal of nonconforming signs and to make reasonable progress in completing their removal expeditiously.

The issue has been raised that the ISTEA does not require States to use ISTEA appropriations for the removal of nonconforming signs. The argument for this position is that the language in section 1046(a) of ISTEA, which states that "* * * a state may use any funds apportioned to it under section 104 of this title for removal [of nonconforming signs]", makes the spending of ISTEA funds for the removal of nonconforming signs completely discretionary with the States. Under this theory, funds would not be "available" for outdoor advertising control unless a State chose to use them for this purpose. Thus, the exception provided by 23 U.S.C. 131(n) would continue to apply in a State not choosing to use funds for sign removal.

After reviewing this argument, the FHWA has concluded that its interpretation of the law is correct. Section 1046(a) of ISTEA amended 23 U.S.C. 131(m), making funds apportioned under 23 U.S.C. 104 available to participate in the cost of outdoor advertising control. Thus, the exception provided by section 131(n) no longer applies, and nonconforming signs must be removed. If a State chooses not to remove nonconforming signs, it fails to provide effective control of outdoor advertising and the Secretary may withhold 10 percent of the State's Federal-aid highway apportionment, pursuant to 23 U.S.C. 131(b). Pursuant to 23 U.S.C. 113(g), just compensation must, of course, be paid to owners of any nonconforming signs removed and to owners of the sites upon which the signs are located.

A strict reading of the ISTEA might suggest that nonconforming signs in existence for more than 5 years should be removed by the States immediately. However, in its March 6 notice, the FHWA provided for a two-year goal to complete the removal of these nonconforming signs. The FHWA reasoned that such a goal was consistent with the intent of the HBA, that all nonconforming signs be removed, while giving due consideration to the competing demands on available funds. The total estimated cost of removing the remaining nonconforming signs, $428 million, was compared to the total eligible Federal-aid funds available to the States for Fiscal Year (FY) 1992 alone, over $11 billion. The $428 million represents 4 percent of this total. Further, the number and estimated cost to remove nonconforming signs in each State was reviewed. The FHWA considered requiring the States to effect the removals in the first year that the ISTEA funds were available. However, the FHWA recognized that, although the ISTEA represents a dramatic increase in the Federal-aid funding, the non-Federal share must still be raised by State or local governments. Moreover, the impact upon individual States in providing for immediate removal would vary.

In its March 6 notice, the FHWA requested that each State advise the FHWA by June 18, 1992, of its process, program, and timetable to ensure that effective control is achieved and maintained. The March 6 notice is still in effect, even though this NPRM effectively extends some of the deadlines therein. It should be emphasized that, as both the March 6 notice and this NPRM acknowledge, the FHWA recognizes that a number of States may have difficulty in attaining the two-year goal. As noted below, comment on this goal is requested. In any case, States which feel that they will have trouble reaching the two-year removal goal are urged to inform the FHWA soon, so that their programs might be reviewed and solutions found.

The FHWA has decided to issue this NPRM to provide an opportunity for comment on proposed criteria that the States should consider in developing their plans for the acquisition and removal of nonconforming signs. In addition, the FHWA wants to establish definite deadlines for submission of plans and for sign removal, with a procedure for extending the time limit if circumstances so warrant. Because of the various impacts of this deadline upon the States and the considerable interest of the public in this program, the FHWA is soliciting public comment upon its proposed action.

Several options for implementing the HBA's nonconforming sign removal requirement are being considered by the FHWA. While the FHWA has proposed changes to its regulation language based upon the fourth option, all options are still being considered. Comments on all or any of the options are requested.

The first option under consideration is to require the immediate removal of nonconforming signs by the States. As indicated above, the FHWA has already provided for a two-year goal for the removal of nonconforming signs in the March 6 notice. This option would reject that reasoning and require States to immediately devote whatever resources are available to effectuate the acquisition and removal of nonconforming signs.

A second option is to require the States to remove nonconforming signs without any specific deadline set for the accomplishment of the task. States would be required to maintain effective control of outdoor advertising, but the rate of removal of nonconforming signs would be at a reasonable pace, to be determined by the States. Presumably, each State would have to justify its basis for concluding that its pace was "reasonable."

A third option being considered by the FHWA is to tie the period for completion of removals to the duration of the ISTEA, a six-year period from FY 1992 through FY 1997. This would allow the States more time to plan and execute their billboard removal programs. Complete removal would have to be accomplished, however, by the end of FY 1997, when the present Federal funding source ends. A variation of option three would be a six-year completion period with specific milestones throughout (e.g. a 33% removal goal in the first year, 20% in the second, etc.).

The regulations proposed in this notice are based upon a fourth option, which would retain the two year goal, to ensure the timely removal of nonconforming signs, but allow flexibility for the States which have genuine problems in meeting the goal. If a State made substantial progress in removing nonconforming signs during the two year period, this effort might support an extension of the time period for complete removal. Although no extension beyond FY 1997 is

contemplated, comment is solicited on the advisability of the two year goal. Should a longer or shorter goal be set? What would be the basis for such a goal? Are the grounds for waiver set forth in the proposed rules appropriate? The FHWA stresses that it wishes to receive comments on all or any of the above four options.

Section-by-Section Analysis

Section 750.705(e)

This amendment provides the appropriate reference to the time period within which nonconforming signs must be removed.

Section 750.707(f)

Acquisition and removal. This addition to § 750.707, "Nonconforming Signs," would provide the States guidance for implementing that part of the effective control provisions of the HBA requiring the removal of nonconforming signs. The introductory text of paragraph (f), the General Rule, would be a succinct re-statement of the overall intent and policy of the HBA with respect to the acquisition and removal of nonconforming signs.

The Special Rule would apply to the 92,000 nonconforming signs previously mentioned. Funding for acquisition and removal of these signs was provided by the ISTEA. Because of the timing of this publication, the Special Rule would extend the two year goal deadline published in the March 6 notice from December 18, 1993 to March 31, 1994.

In the March 6 notice, the FHWA determined that a two year period for the complete removal of nonconforming signs was consistent with the intent of the HBA as provided for by the re-established funding under the ISTEA. As indicated above, the two year period was selected after comparing the total estimated cost of removing the remaining nonconforming signs, $428 million, to the total eligible Federal-aid funds available to the States for FY 1992 alone. During the next two fiscal years, more than $24 billion Federal-aid dollars can be expected to be made available to the States for 23 U.S.C. 104 projects. Considering the number of nonconforming signs remaining in the various States, most States could conclude their removal program using less than 2 percent of their 23 U.S.C. 104 funds within the two year period. Therefore, full acquisition and removal of the remaining nonconforming signs over the next two years would seem to be an achievable goal. Those commenting on the two year goal are encouraged to address this analysis and, if suggesting another time period, to indicate the basis for their suggestion.

Submission of the State's Plan

The March 6 notice also required the States to submit "its process, program, and timetable * * *" to the FHWA by June 18, 1992, which is the plan called for in this proposed regulation. The due date for this plan will now be 60 days from the effective date of the final regulation, if promulgated. However, any State may submit its plan at an earlier date if the plan addresses requirements and considerations of the March 6 notice. We, in fact, recommend that the States not delay the development of their plans.

Plan Development

To provide for the orderly and continuing acquisition and removal of nonconforming signs and the timely completion of the removal of the nonconforming signs subject to the Special Rule, the State must develop a plan for such acquisition and removal that considers a wide variety of factors. The plan should be tailored to fit the particular needs of the State. For example, a State with fewer signs to acquire may wish simply to provide an anticipated removal schedule and plan addressing the factors to be considered in general terms. For those States with a sizeable number of signs to be acquired and removed, the plan will be more complex. In any event, the State must focus on completing the required acquisitions and removals by March 31, 1994 (or such other date as is finally adopted), and the State's plan must show that the acquisitions and removals are scheduled to proceed in an orderly and continuing manner, and that provisions are made to ensure reasonable progress until all acquisitions and removals are completed. A State plan containing a "balloon" expenditure that, in effect, delays removal until the end of the proposed plan would not represent reasonable progress. FHWA considered but rejected a more rigid way of establishing a State removal program, based strictly on the amount of money spent. Under this approach, a State would have to dedicate a set percentage (such as, for example, 2%) of its annual highway apportionment until all nonconforming signs are removed.

Priority of Removals

The FHWA believes it would be of some benefit to a State to obtain the views of others in developing that part of the State's plan concerned with the priority of removals. This will probably not be necessary in a State with only a limited number of signs to be removed. The means of obtaining these views is left to the discretion of the State. Public meetings might be helpful in obtaining differing views but such meetings are only suggested and not required.

Inability to Complete the Acquisitions and Removals by March 31, 1994 (or such other date as is finally adopted)

The FHWA recognizes that the impact of removing the remaining nonconforming signs will vary in individual States. Some States may have great difficulty in attaining the goal set in the regulation. For example, a State with an inventory of just a few hundred nonconforming signs would have a more manageable acquisition task than a State with over 2,000 such signs. Unusual fiscal or procedural problems may exist in certain cases. If a State, in preparing its plan, concludes that it cannot meet the completion date set in the regulation, because of extraordinary circumstances which the State can clearly demonstrate, the State may request an extension. In that event, the plan must explain those circumstances, and provide for a different, but definite, date for completion of the acquisition and removal of the State's nonconforming signs. We would not anticipate granting an extension beyond the life of the ISTEA. (Sept. 30, 1997).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, it is a significant rule under the policies and procedures of the Department of Transportation relating to regulations because of the public interest in the issue of removal of nonconforming signs.

The FHWA believes that there will be no major direct economic impact because under the terms of the HBA, sign owners and owners of the sites on which the signs are located will be fully compensated for the signs under State law, with up to 80% reimbursement to the States by FHWA. Further, under the HBA, the States are not required to remove a sign until five years after it becomes nonconforming. Thus, sign owners receives the benefits of both use of the signs for at least five years after

they become nonconforming, and compensation under the HBA. Many nonconforming signs have been in place since the enactment of the HBA in 1965 because there were not enough funds for removal until the enactment of the ISTEA.

The agency believes that there will be no major indirect impact on employment although the FHWA has received some comments which state that the removal policy could result in the loss of 50,000 to 60,000 jobs. The HBA, with new sources of funding from the ISTEA, requires removal of 92,000 signs, which represent approximately 20% of the existing signs on 8% of highways in the United States (i.e., the highways which are controlled under the HBA). These removals will occur over more than two years, or in some cases, until 1997. Further, based on upon information provided by the States for purposes of the HBA, and analysis from the Congressional Research Service, it is estimated that approximately 15,000 or 16,000 conforming (not subject to removal) signs are erected upon the controlled highways each year. Erection of new signs which comply with State requirements on the remaining 92% of highways, many of which are located in urbanized areas, is not subject to limitation under the HBA. Therefore, even if none of the compensation for the signs which are removed is reinvested in conforming signs, no major impact upon employment in the outdoor advertising services industry (comprising approximately 13,600 people according to 1988 Census Bureau information) is anticipated. The FHWA requests comments on the economic impacts of this rule from all interested and affected parties.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities. The FHWA has determined that these changes will not have a significant economic impact on a substantial number of small entities. Although this rule requires States to develop a plan for the removal of nonconforming signs, the mandate for the removal is not a new legislative requirement; it has been an integral part of effective control since the passage of the 1965 Highway Beautification Act. The Interstate and primary highway systems comprise only 306,000 of the 3.9 million miles of public roads and streets in the United States. Therefore, the outdoor advertising controls apply to less than 8 percent of the total national public road mileage. Just compensation (or, if they chose, relocation costs) will be provided to the sign owners and the owners of the sites on which the signs are located. Federal participation is available for 75 to 80 percent of this cost. In addition, the removal of nonconforming signs leaves intact both a substantial number of conforming signs and the ability to continue to erect conforming signs. Also, businesses not only have conforming signs on which to advertise, there are several alternative, but similar, means by which businesses may advertise such as on "logo" signs within the right-of-way, Tourist Oriented Directional Signs, informational centers in safety rest areas, and, in some areas, through new experimental technology referred to as "in vehicle motorist information systems." Further, existing law, 23 U.S.C. 131(o), provides for an exemption from the requirement to remove nonconforming signs in defined geographical areas within a State where it can be demonstrated that such removal would work a substantial economic hardship throughout the area.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (44 U.S.C. 3504(h)), the FHWA finds that no additional burdens are being placed upon the States. Under the proposed rule, the States would be required to formulate a plan for the removal of nonconforming signs based upon the information contained in the States' inventories of signs on Interstate and primary highway systems. The States have been required to keep such information pursuant to existing FHWA regulations.

National Environmental Policy Act

Although these amendments will lead to the enhancement of the visual environment, they do not constitute a major action having a significant effect on the environment. Therefore, these amendments do not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

Regulation Identification Number

A regulation identification number [RIN] is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number for this section can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 750

Advertising, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements, Signs and symbols.

In consideration of the foregoing, the FHWA proposes to amend chapter I of title 23, Code of Federal Regulations, part 750, subpart G as set forth below.

Issued on: May 5, 1992.

T.D. Larson,

Administrator.

PART 750—HIGHWAY BEAUTIFICATION

Subpart G—Outdoor Advertising Control

1. The authority citation for 23 CFR part 750, subpart G continues to read as follows:

Authority: 23 U.S.C. 131 and 315; 49 CFR 1.48.

§ 750.705 [Amended]

2. In § 750.705, paragraph (e) is amended by removing the words "set by 23 U.S.C. 131" and by inserting in lieu thereof the words "set forth in § 750.707(f) of this part."

3. In § 750.707, paragraph (f) is added to read as follows:

§ 750.707 Nonconforming signs.

* * * * *

(f) *Acquisition and removal*—(1) *General rule.* The States shall expeditiously acquire and remove all signs which have been nonconforming for a period of 5 years or more.

(2) *Special rule.* All signs which have been nonconforming for 5 years or more

as of the effective date of this regulation must be acquired and removed by March 31, 1994, except as provided in paragraph (f)(2)(ii) of this section. Within 60 days following the effective date of this regulation the State shall submit a plan to the FHWA for the acquisition and removal of nonconforming signs subject to the special rule. Among other things the plan must make provision for orderly and continuing acquisition and removal and ensure reasonable progress toward timely completion of the plan.

(i) *Plan development.* In developing its plan the State will have to review existing priorities and formulate a program and process that will maintain effective control. The plan shall provide for expeditious acquisition and removal and address the following factors:

(A) Total number of nonconforming signs to be acquired and removed, including provision for the acquisition and removal of signs that reach the 5-year nonconforming limitation during the life of the plan.

(B) Projected rate of acquisition and removal.

(C) Rate of expenditure as a percentage of funds apportioned to the State under 23 U.S.C. 104. A rate of expenditure by each State of 2 percent per year for a two year period will ensure, in most cases, that all nonconforming signs are acquired and removed in two years.

(D) Priority of removals. The State, at its option, may establish priorities for sign acquisition and removal. In establishing priorities, the State may elect to involve interested parties and affected entities such as other State and local agencies, sign owners, environmental groups and the business community.

(ii) Should the extraordinary circumstances in a State, as supported by the specific information in the plan, clearly demonstrate that the State cannot complete the acquisition and removal of nonconforming signs by March 31, 1994, those circumstances shall be explained in the State's request for an extension of the time period within which to complete the acquisition and removal of nonconforming signs which will be a part of the State's plan. In no event shall the time period for the completion of the acquisition and removal of nonconforming signs under the State's plan extend beyond the end of Fiscal Year 1997.

[FR Doc. 92-10859 Filed 5-6-92; 11:00 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-003-89]

RIN 1545-AN02

Exhaustion of Administrative Remedies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to provide guidance relating to the circumstances in which a party normally will be considered to have exhausted the administrative remedies available within the Internal Revenue Service for purposes of the recovery of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court). The proposed regulations in this document differ from the regulations previously issued under section 7430, which expired for cases commenced after December 31, 1985, and addressed the exhaustion of administrative remedies requirement for recovery of litigation costs incurred by taxpayers with respect to a court proceeding in connection with the determination, collection, or refund of any tax, interest, or penalty. Portions of the regulations under section 7430 were held to be invalid by the United States Tax Court in *Minahan* v. *Commissioner.* Those portions have been removed in the proposed regulations.

DATES: Written comments and requests to appear (with outlines of oral comments) at the public hearing scheduled for July 8, 1992, must be received by June 17, 1992.

ADDRESSES: Send comments to: Internal Revenue Service, Attn: CC:CORP:T:R (IA-003-89), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Thomas D. Moffitt of the Office of Assistant Chief Counsel (Field Service), Internal Revenue Service, (202) 566-3521 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document provides proposed regulations under section 7430 regarding the circumstances under which taxpayers may recover reasonable litigation costs in a court proceeding with respect to the determination, collection, or refund of any tax, interest or penalty. These regulations mirror the previous regulations under this section which were effective for civil tax proceedings commenced after February 28, 1983, and before January 1, 1986, except that the proposed regulations do not contain any requirement that taxpayers extend the period for assessment and collection in order to be considered to have exhausted their administrative remedies.

The reason for the expiration date in Treas. Reg. § 301.7430-1 (26 CFR 301.7430-1) as originally promulgated was that the statute itself originally contained a sunset provision. After expiring, the statute was reenacted retroactively to the expiration date.

Explanation of Regulatory Provisions

In general, a prevailing party may recovery the reasonable litigation costs incurred in a civil proceeding if the proceeding relates to the determination, collection or refund of any tax, interest or penalty under the Internal Revenue Code and the party has exhausted all the administrative remedies related to that party's tax matter.

The proposed regulations provide information concerning the circumstances in which the Internal Revenue Service normally will consider a party's administrative remedies exhausted. In general, administrative remedies are considered exhausted if the party has requested (and if granted, participated in) an Appeals office conference on the party's tax matter prior to filing an action in a court of the United States (including a petition in the United States Tax Court). A party has participated in an Appeals office conference if the party has disclosed all relevant information regarding the matter to the Appeals office. In the case of the revocation of a determination that an organization is described in section 501(c)(3), a party must complete the procedures set forth in section 7428 and in regulations, rules and revenue procedures thereunder to exhaust its administrative remedies. Where no administrative procedure covering a party's tax matter allows the party to request an Appeals office conference, the party's administrative remedies will not be considered exhausted unless the party has filed a written claim for relief with the district director having jurisdiction over the tax matter and allowed the district director a reasonable period of time to act on the claim. A party is not required to pursue its administrative remedies if the Internal Revenue Service has notified the party in writing that such pursuit is unnecessary, has not given the party an opportunity to request an Appeals office conference before sending a statutory notice of deficiency, or has failed to

grant the party an Appeals office conference with respect to a claim for refund within six months of the filing of such claim for refund. A party must participate in an Appeals office conference during either the deficiency procedures or the refund procedures with respect to the tax matter, but is not required to participate during both procedures. Thus, if a party participated in an Appeals office conference with respect to a tax matter prior to the issuance of the statutory notice of deficiency, the party does not need to request an Appeals office conference after filing a claim for refund with respect to the same tax matter.

The proposed regulations do not contain any requirement that the taxpayer extend the time for assessment and collection to be considered to have exhausted administrative remedies. In *Minahan* v. *Commissioner*, 88 T.C. 492 (1987), the Tax Court was faced with the question of whether the failure of a taxpayer to agree to an extension of the time for assessment and collection prevented that taxpayer from qualifying for an award of litigation costs due to a failure to exhaust the administrative remedies available within the Internal Revenue Service. The Tax Court held that the provisions of Treas. Reg. § 301.7430–1 requiring taxpayers in certain circumstances to agree to extend the time for assessment and collection were invalid. After reconsideration, the Service has concluded that requiring taxpayers to extend the time for assessment and collection is not contemplated by the statutory requirement that taxpayers exhaust their administrative remedies and does not comport with considerations of fairness in tax administration.

The proposed regulations apply to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court) after May 7, 1992.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291 because the economic or other consequences are a direct result of a statute. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing is scheduled to be held on July 8, 1992. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Thomas D. Moffitt, Office of Assistant Chief Counsel (Field Service), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental Shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 301 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7430–1 is revised to read as follows:

§ 301.7430–1 Exhaustion of administrative remedies.

(a) *In general.* Section 7430(b)(1) provides that a court shall not award reasonable litigation costs in any civil tax proceeding under section 7430(a) unless the court determines that the prevailing party has exhausted the administrative remedies available to the party within the Internal Revenue Service. This section sets forth the circumstances in which the Internal Revenue Service normally will consider such administrative remedies exhausted.

(b) *Tax, penalty and addition to tax*—(1) *In general.* A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to any tax matter for which an Appeals office conference is available under §§ 601.105 and 601.106 of the Statement of Procedural Rules (26 CFR part 601) (other than a tax matter described in paragraph (c) of this section) unless—

(i) The party, prior to filing a petition in the Tax Court or a civil action for refund in a court of the United States, participates, either in person or through a qualified representative described in § 601.502 of this chapter, in an Appeals office conference; or

(ii) If no Appeals office conference is granted, the party, prior to the issuance of a statutory notice in the case of a petition in the Tax Court or the issuance of a notice of disallowance in the case of a civil action for refund in a court of the United States—

(A) Requests an Appeals office conference in accordance with §§ 601.105 and 601.106 of this chapter; and

(B) Files a written protest if a written protest is required to obtain an Appeals office conference.

(2) *Participates.* For purposes of this paragraph, a party or qualified representative of the party described in § 601.502 of this chapter participates in an Appeals office conference if the party or qualified representative discloses to the Appeals office all relevant information regarding the party's tax matter to the extent such information and its relevance were known or should have been known to the party or qualified representative at the time of such conference.

(c) *Revocation of a determination that an organization is described in section 501(c)(3).* A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to a revocation of a determination that it is an organization described in section 501(c)(3) unless, prior to filing a declaratory judgment action under section 7428, the party has exhausted its administrative remedies in accordance with section 7428, and any regulations, rules, and revenue procedures thereunder.

(d) *Actions involving summonses, levies, liens, jeopardy and termination assessments, etc.* (a) A party has not exhausted its administrative remedies available within the Internal Revenue Service with respect to a matter other than one to which paragraph (b) or (c) of this section applies (including summonses, levies, liens and jeopardy and termination assessments) unless, prior to filing an action in a court of the United States—

(i) The party submits to the district director of the district having jurisdiction over the dispute a written claim for relief reciting facts and circumstances sufficient to show the nature of the relief requested and that the party is entitled to such relief; and

(ii) The district director has denied the claim for relief in writing or failed to act on the claim within a reasonable period after such claim is received by the district director.

(2) For purposes of this paragraph, a reasonable period is—

(i) The 5-day period preceding the filing of a petition to quash an administrative summons issued under section 7609;

(ii) The 5-day period preceding the filing of a wrongful levy action in which a demand for the return of property is made;

(iii) The period expressly provided for administrative review of the party's claim by an applicable provision of the Internal Revenue Code that expressly provides for the pursuit of administrative remedies (such as the 16-day period provided under section 7429(b)(1)(B) relating to review of jeopardy assessment procedures); or

(iv) The 60-day period following receipt of the claim for relief in all other cases.

(e) *Tax matter.* For purposes of this section "tax matter" means a matter in connection with the determination, collection or refund of any tax, interest or penalty under the Internal Revenue Code.

(f) *Exception to requirement that party pursue administrative remedies.* A party's administrative remedies within the Internal Revenue Service are considered exhausted for purposes of section 7430 if—

(1) The Internal Revenue Service notifies the party in writing that the pursuit of administrative remedies in accordance with paragraphs (b), (c) and (d) of this section is unnecessary.

(2) In the case of a petition in the Tax Court—

(i) The party did not receive a preliminary notice of proposed deficiency (30-day letter) prior to the issuance of the statutory notice and the failure to receive such notice was not due to actions of the party (such as a failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); and

(ii) The party does not refuse to participate in an Appeals office conference while the case is in docketed status.

(3) In the case of a civil action for refund involving a tax matter other than a tax matter described in paragraph (f)(4) of this section, the party—

(i) Exhausted the administrative remedies available within the Internal Revenue Service with respect to the tax matter prior to issuance of a statutory notice of deficiency with respect to such tax matter; or

(ii) Did not receive a preliminary notice of proposed disallowance prior to issuance of a statutory notice of disallowance and the failure to receive such notice was not due to the actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(iii) Did not receive either written or oral notification that an Appeals office conference had been granted within six months from the date of the filing of the claim for refund and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter).

(4) In the case of a civil action for refund involving a tax matter under section 6703 and 6694—

(i) The party did not receive a preliminary notice of proposed disallowance prior to issuance of a statutory notice of disallowance and the failure to receive such notice was not due to actions of the party (such as the failure to supply requested information or a current mailing address to the district director or service center having jurisdiction over the tax matter); or

(ii) During the six-month period following the day on which the party's claim for refund is filed, the party's claim for refund is not denied and there is no Appeals office conference with respect to the claim in which the party could participate (within the meaning of paragraph (b) of this section).

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

Example 1. Taxpayer A exchanges property held for investment for similar property and claims that the gain on the exchange is not recognized under section 1031. The Internal Revenue Service conducts a field examination and determines that there has not been a like-kind exchange. No agreement is reached on the matter and a preliminary notice of proposed deficiency (30-day letter) is sent to A. A does not file a request for an Appeals office conference. A pays the amount of the proposed deficiency and files a claim for refund. A preliminary notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and, instead, files a civil action for refund in a United States District Court. A has not exhausted the administrative remedies available within the Internal Revenue Service.

Example 2. Assume the same facts as in *Example 1* except that, after receiving the preliminary notice of proposed deficiency (30-day letter), A files a request for an Appeals office conference. No agreement is reached at the conference. A pays the amount of the proposed deficiency and files a claim for refund. A preliminary notice of proposed disallowance is issued by the Internal Revenue Service. A does not request an Appeals office conference and files a civil action for refund in a United States District Court. A has exhausted the administrative remedies available within the Internal Revenue Service.

Example 3. Assume the same facts as in *Example 1* except A first requests an Appeals office conference after A's receipt of the preliminary notice of proposed disallowance. A is granted an Appeals office conference and A participates in such conference. A has exhausted the administrative remedies available within the Internal Revenue Service.

Example 4. Taxpayer B receives a preliminary notice of proposed deficiency (30-day letter) after completion of a field examination. B provided to the Internal Revenue Service during the examination all relevant information under the taxpayer's control and all relevant legal arguments supporting the taxpayer's position. B properly requests an Appeals office conference. The Appeals office, to obtain an additional period of time to consider the tax matter, requests that B sign Form 872 to extend the time for an assessment of tax, but B declines. Appeals then denies the request for a conference and issues a notice of deficiency. B has exhausted the administrative remedies available within the Internal Revenue Service.

Example 5. Taxpayer M receives a preliminary notice of proposed deficiency (30-day letter). M submits a written protest and files a request for an Appeals office conference. The Appeals office sends M a written statement that M will not be granted an Appeals office conference. M is considered to have exhausted the administrative remedies available within the Internal Revenue Service.

Example 6. Taxpayer J receives a preliminary notice of proposed deficiency (30-day letter) and a written statement that J need not file a written protest or request an Appeals office conference since a conference will not be granted. J files a petition in the Tax Court after receiving the statutory notice of deficiency. J's administrative remedies available within the Internal Revenue Service are considered exhausted.

Example 7. On January 2, the Internal Revenue Service serves a summons issued under section 7609 on third-party recordkeeper B to produce records of taxpayer R. On January 5, notice of the summons is given to R. The last day on which R may file a petition in a court of the United States to quash the summons is January 25. Thereafter, R files a written claim for relief with the district director having jurisdiction

over the matter together with a copy of the summons. The claim and copy are received by the district director on January 20. On January 25, R files a petition to quash the summons. R's administrative remedies available within the Internal Revenue Service are considered exhausted.

Example 8. A notice of Federal tax lien is filed in County M on March 3, in the name of R. On April 2, R pays the entire liability thereby satisfying the lien. On May 2, R files a written claim with the district director having jurisdiction over the tax matter demanding a certificate of release of lien. Thereafter, R provides the district director with a copy of the notice of Federal tax lien and a copy of the canceled check in satisfaction of the lien, which are received by the district director on May 15. R's claim is deemed to have been filed on May 15. Accordingly, R is considered to have exhausted R's administrative remedies with respect to an action commenced after July 14 (60 days following the filing of the claim for relief on May 15).

Example 9. A revenue officer seizes an automobile to effect collection of P's liability on January 10. On January 22, R submits a written claim to the district director having jurisdiction over the tax matter claiming that R purchased the automobile from P for an adequate consideration before the tax lien against P arose, and demands immediate return of the automobile. A copy of the title certificate and R's canceled check are submitted with the claim. The claim is received by the district director on January 25. On January 30, R brings a wrongful levy action. R is considered to have exhausted the administrative remedies available within the Internal Revenue Service.

Example 10. The Internal Revenue Service issues a revenue ruling which holds that ear piercing does not affect a function or structure of the body within the meaning of section 213 and therefore is not deductible. Taxpayer E deducts the costs of ear piercing and following an examination, receives a preliminary notice of proposed deficiency (30-day letter) disallowing the treatment of such costs. Because of the revenue ruling, E believes a conference would not aid in the resolution of the tax dispute. Accordingly, E does not request an Appeals office conference. After receiving a statutory notice of deficiency, E files a petition in the Tax Court. E has not exhausted the administrative remedies available within the Internal Revenue Service. The issuance of a revenue ruling covering the same fact situation but taking a contrary position does not constitute notification by the Internal Revenue Service to E that the pursuit of administrative remedies is unnecessary. Similarly, the issuance to E of a private letter ruling or technical advice does not constitute notification by the Internal Revenue Service that the pursuit of administrative remedies is unnecessary.

Example 11. Taxpayer G is assessed a penalty under section 6701 for aiding in the understatement of the tax liability of another person. G pays 15% of the penalty in accordance with section 6703 and files a claim for refund on June 15. G is not issued a preliminary notice of proposed disallowance and thus cannot participate in an Appeals office conference within six months of the filing of the claim for refund. G brings an action on December 23. G has exhausted the administrative remedies available within the Internal Revenue Service.

Example 12. Taxpayer H receives a preliminary notice of proposed deficiency (30-day letter) and neither requests nor participates in an Appeals office conference. The Service then issues a statutory notice of deficiency (90-day letter). Upon receiving the statutory notice, H requests an Appeals office conference. The Appeals office informs H that an Appeals office conference will not be granted. H files a petition in the Tax Court after receiving notice of the denial of a conference. H has not exhausted the administrative remedies available within the Internal Revenue Service because the request for an Appeals office conference was made after the issuance of the statutory notice.

(h) *Effective date.* This section applies to court proceedings described in section 7430 filed in a court of the United States (including the Tax Court) after May 7, 1992.

David G. Blattner,

Chief Operations Officer.

[FR Doc. 92-10456 Filed 5-7-92; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[IA-003-89]

RIN 1545-AN02

Exhaustion of Administrative Remedies; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the circumstances in which a party normally will be considered to have exhausted the administrative remedies available within the Internal Revenue Service for purposes of the recovery of court costs and certain fees in a civil tax proceeding brought in a court of the United States (including the Tax Court).

DATES: The public hearings will be held on Wednesday, July 8, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, June 17, 1992.

ADDRESSES: The public hearing will be held in the IRS Commissioner's Conference Room, room 3313, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [IA-003-89], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9232, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7430 of the Internal Revenue Code. These regulations appear in the proposed rules section of this issue of the Federal Register.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, June 17, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

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

[FR Doc. 92-10457 Filed 5-7-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD1 91-167]

Special Anchorage Area; Lower Hudson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special anchorage area in the Lower Hudson River in the waters contiguous to the Manhattan shoreline. This anchorage would be located north of the George Washington Bridge and would change the designation of Federal Anchorage 18–B from a general anchorage ground to a special anchorage. The co-applicants, New York City Department of Parks & Recreation and Dyckman Marine Venture, Ltd., requested this area be designated as a special anchorage to increase access and recreation options for the public. This regulation will provide an anchorage where vessels 65 feet or less in length can safely remain unlighted at night and during periods of reduced visibility. There is no such anchorages available in the immediate area.

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

ADDRESSES: Comments should be mailed to Captain of the Port, New York, Bldg. 109, Governors Island, NY 10004–5098. The comments and other materials referenced in this notice will be available for inpsection and copying at the Waterways Management Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant C.W. Jennings, Waterways Management Officer, Commander, Coast Guard Group New York, at (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include thier name and address, identify this rulemaking (CGD1 91–167) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Captain of the Port at the address under "**ADDRESSES.**" If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are LT C.W. Jennings, Project Officer, Captain of the Port New York and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

Background and Purpose

The co-applicants, New York City Department of Parks & Recreation and Dyckman Marine Venture, Ltd., requested this area as designated a special anchorage to enhance access and use of this waterway, and increase the recreational options for the public. The area is presently designated a federal achnorage, FA 18–B, and is described in 33 CFR 110.155(c)(4). The anchorage ground, as presently designated, was established sometime prior to December 12, 1967 by the Department of the Army. December 12, 1967 is the same date the Coast Guard assumed administrative and regulatory control of federally established anchorages. The Coast Guard does not have any record of this anchorage ground being used for its intended purpose as a commercial deep draft anchorage or as a naval vessel auxiliary anchorage. The City requests to have this area federally designated as a special anchorage area, in order to increase the amount of mooring space available to the recreational boating population.

The proposed designation would change this anchorage from a general anchorage ground to a special anchorage where vessels 65 feet or less could remain unlighted at night and during periods of limited visibility without hazarding maritime traffic in the area. This area is located adjacent to the existing facilities at the Dyckman Street Marina. There are currently no such anchorages available in the immediate area. The co-applicants will administer this mooring area by issuing permits for its habitual use and by providing oversight to ensure the area is operated within applicable Coast Guard guidelines. Upon approval the co-applicants will make available an area for docking and storage, and will also provide free sewage pumpout services for all vessels holding valid mooring permits. This special anchorage will be available to the general public. It this rule is adopted the requestor will be required, by the Coast Guard, to establish private lighted aids to navigation to ensure the area is adequately marked.

Discussion of Proposed Amendments

The area proposed for designation as a special anchorage is located wholly within the waters presently designated as Federal Anchorage 18–B, as described in 33 CFR 110.155(c)(4). It is contiguous to the shoreline of Manhattan north of the George Washington Bridge and south of Tubby Hook. This regulation, if adopted, will remove the general anchorage ground designation and reestablish the area as a special anchorage. No historical usage of this area by deep draft vessels, naval or otherwise, could be found. This is due to the predominantly shallow drafts and narrowness of the anchorage, which renders this area more suitable for shallow draft recreational craft.

This rule would allow the mooring of small boats (vessels 65 feet and less in length) without requiring them to display anchor lights or sound fog signals. The area will not affect navigable channels and is located where general navigation will not endanger or be endangered by unlighted vessels. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2071 as set out in the authority citation for all of Part 110.

Regulatory Evaluation

This proposal is not major under Executive Order 12291, and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The area has always been a designated anchorage ground; this regulation merely makes its utilization more available to the general population, in particular, recreational vessel operators. Establishment of this proposed special anchorage area will not require dredging or result in increased cost to any segment of the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This proposal only changes the designation of an established anchorage ground and does not impose any new or special expense on the general public or small entities. Because it expects the

impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2(c) of Commandant Instruction M16475.1B, this proposal it categorically excluded from further environmental documentation. This proposal will not result in any significant cumulative impact on the human environment or environmental conditions, in that the proposed regulation will merely redesignate an existing anchorage.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1223 and 1231.

2. In section 110.60 paragraph (o–3) is added to read as follows:

§ 110.60 Port of New York and vicinity.

* * * * *

(o–3) *Hudson River, North Manhattan.* The waters of the Lower Hudson River as described by a line connecting the following points:

Latitude	*Longitude*
40°51'08.0" N	073°56'36.1" W
40°51'09.5" N	073°56'40.9" W
40°52'08.1" N	073°55'57.0" W

thence along the shoreline to the point of the beginning.

* * * * *

§ 110.155 [Amended]

3. Section 110.155(c)(4) is removed and reserved.

Dated: April 23, 1992.

RADM U.S. Coast Guard,

Commander, First Coast Guard, District

[FR Doc. 92–10405 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–25]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard proposes to modify the regulations of the Ringling Causeway Drawbridge, mile 73.6 at Sarasota. This proposal is being made as a result of complaints about early morning highway traffic congestion caused by bridge openings. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

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

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami FL 33131–3050, or may be delivered to Room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–25] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal except that from 7:30 a.m. to 6 p.m., the draw need be opened only on the hour and half hour. The MPO and the bridge owner have requested that the half hour opening schedule commence 30 minutes earlier at 7 a.m. instead of 7:30 a.m. due to increased early morning traffic levels.

Discussion of Proposed Amendments

The proposal would begin the regulated period at 7 a.m. instead of 7:30 a.m. to reduce highway congestion caused by drawbridge openings. A Coast Guard evaluation of the proposal concluded that the traffic levels had increased during this period and back-to-back openings had created unusual traffic congestion. This early morning change should not unreasonalby impact navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard

must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **"ADDRESSES"**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 117 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. In § 117.287, paragraph (c) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(c) The draw of the Ringling Causeway (SR 780) bridge, mile 73.6, at Sarasota, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half hour.

* * * * *

Dated: April 27, 1992.

R.E. Kramek,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–10841 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–26]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Council Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard proposes to modify the regulations of the Cortez Drawbridge, GICW mile 87.4, at Cortez. This proposal is being made because of complaints about highway traffic delays. This action should accommodate the current needs of vehicular traffic while still meeting the reasonable needs of navigation.

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

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami FL 33131–3050, or may be delivered to Room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–26] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the above address. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lt. J.M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal; except that from 9 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays the draw need open only on the hour, quarter hour, half hour and three-quarter hour. From December 1 to May 31, Monday through Friday, from 9 a.m. to 6 p.m, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour. The MPO and the bridge owner have requested that the bridge be allowed to open only on the hour and half-hour between 7 a.m. and 6 p.m. weekdays and 9 a.m. to 6 p.m. on weekends.

Discussion of Proposed Amendments

A Coast Guard evaluation of the proposal concluded that highway traffic levels and frequency of bridge openings did not justify the proposed 30 minute opening schedule for a drawbridge on the Gulf Intracoastal Waterway. However, in order to reduce traffic congestion, increasing the seasonal opening schedule to a daily, year around 20 minute schedule appears to be warranted. These changes should reduce traffic delays without unreasonably impacting navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation in unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 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. In § 117.287, paragraph (d)(1) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d)(1) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

* * * * *

Dated: April 27, 1992.

R.E. Kramek,

RADM, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92–10842 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–28]

Drawbridge Operation Regulations; New Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Sarasota/Manatee Metropolitan Planning Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard proposes to modify the regulations of the New Pass Drawbridge, mile 0.0, between Longboat Key and Lido Key at Sarasota. This proposal is being made to relieve weekend traffic congestion while still meeting the reasonable needs of navigation.

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

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, FL 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–28] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the above address. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lt. J. M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal; except that from 7 a.m. to 6 p.m. Monday through Friday, except federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour. The MPO and the bridge owner have requested that the bridge be allowed to open only on the hour and half-hour between 7 a.m. and 6 p.m. weekdays and 9 a.m. to 6 p.m. on weekends.

Discussion of Proposed Amendments

The proposal would begin the regulated period at 9 a.m. instead of 10 a.m. on weekends and change the 20 minute opening schedule to a 30 minute opening schedule. A Coast Guard evaluation of the proposed changes concluded that this two lane highway has become seriously congested between 7 a.m. and 6 p.m. each day due to a large increase in permanent resident population and seasonal visitors. However, the number of bridge openings averages less than 7 openings per day and the vessel holding conditions near the bridge are unsafe for extended delays due to shoaling, strong currents and cross winds. As a result of these navigational limitations, a 30 minute opening is not warranted. Extending the existing 20 minute shedule to be effective from 7 a.m. to 6 p.m. each day is recommended.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of

Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**".

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 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. Section 117.311 is revised to read as follows:

§ 117.311 New pass.

The draw of the State Road 789 bridge, mile 0.0, at Sarasota, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed at any time.

Dated: 27 April 1992.

R.E. Kramek;

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92–10843 Filed 5–7–92; 8:45 a.m]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–93, RM–7950]

Radio Broadcasting Services; Fagaitua, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Aleki Sene, seeking the allotment of Channel 276C2 to Fagaitua, American Samoa, as that community's first local FM service. Channel 276C2 can be allotted to Fagaitua, American Samoa, in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates are South Latitude 14–16–19 and West Longitude 170–36–43.

DATES: Comments must be filed on or before June 22, 1992, and reply comments on or before July 7, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should seve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006 (Attorney for Aleki Sene).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–93, adopted April 15, 1992, and relased May 1, 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. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, N.W, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–10783 Filed 5–7–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–99, RM–7971]

Radio Broadcasting Services; Rock Valley, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert M. Mason seeking the subtitution of Channel 295C3 for Channel 295A at Rock Valley, Iowa, and the modification of Station KQEP's construction permit to specify operation on the higher class channel. Channel 295C3 can be allotted to Rock Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.3 kilometers (9.5 miles)

north to accommodate petitioner's desired transmitter site, at coordinates North Latitude 43–20–27 and West Longitude 96–18–34. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for Channel 295C3 at Rock Valley or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 25, 1992, and reply comments on or before July 10, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Aaron P. Shainis, Esq., Lee J. Peltzman, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 5335 Wisconsin Avenue NW., suite 300, Washington, DC 20015–2003 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the commission's Notice of Proposed Rule Making, MM Docket No. 92–99, adopted April 23, 1992, and released May 4, 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. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–10787 Filed 5–7–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–94; RM–7955]

Radio Broadcasting Services; Springfield, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by James Ingstad Broadcasting, Inc., proposing the substitution of Channel 234C2 for Channel 234A at Springfield, Minnesota, and modification of the construction permit for Station KLPR(FM) to specify the higher class channel. The coordinates for Channel 234C2 are 44–22–45 and 95–19–00. We shall propose to modify the construction permit for Channel 234A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 22, 1992, and reply comments on or before July 7, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Clifford M. Harrington, Matthew P. Zinn, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–94, adopted April 15, 1992, and released May 1, 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. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Michael C. Ruger,

Acting Chief, Allocations Branch, Policy and Ruels Division, Mass Media Bureau.

[FR Doc. 92–10784 Filed 5–7–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Peninsular Ranges Population of the Desert Bighorn Sheep as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the Peninsular Ranges population of desert bighorn sheep (*Ovis canadensis*) as an endangered species pursuant to the provisions of the the Endangered Species Act of 1973, as amended (Act). A disease epizootic has contributed to significant declines in certain mountain ranges that are already stressed as a result of habitat loss and degradation, competition from feral and domestic livestock, lack of water, and other factors. The range of this population of desert bighorn sheep extends along the Peninsular Ranges from the vicinity of Palm Springs, California, into Baja California, Mexico. The total of individuals in the United States numbers fewer than 400, distributed among 7 mountain ranges, which is a population decrease from 1,171 reported in 1979. Lamb recruitment rates are at a critically low number throughout most of the range of the population and are inadequate to maintain current population size. Status surveys in Mexico were initiated in 1988; preliminary estimates indicate that a noticeable decline has occurred. This proposed rule, if made final, would extend the Act's protection to the Peninsular Ranges population of bighorn sheep. The Service seeks data and

comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by November 4, 1992. Public hearing requests must be received by June 22, 1992.

ADDRESSES: The complete file for this rule is available for inspection during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 619/431–9440). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey D. Opdycke, Field Supervisor (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

All desert bighorn sheep belong to the species *Ovis canadensis* (family Bovidae), described by Shaw in 1804. Researchers later attempted to separate the species into several subspecies or races based primarily on geographic location and differences in skull measurements (Buechner 1960, Cowan 1940, Hall 1981). These subspecies or races of bighorn sheep include *Ovis canadensis cremnobates* (Peninsular bighorn), *O. c. nelsoni* (Nelson bighorn), *O. c. mexicana* (Mexican bighorn), *O. c. weemsi* (Weems bighorn), *O. c. california* (California bighorn), and *O. c. canadensis* (Rocky Mountain bighorn). Authorities differ on the precise geographic limits of *O. c. cremnobates* and *O. c. nelsoni*. The range of the population that is the subject of this proposed rule is the same as that of *O. c. cremnobates*, as recognized by the California Department of Fish and Game. For convenience and consistence with State listing, the population will be referred to as the Peninsular bighorn in the narrative of this proposal.

The Peninsular Ranges support a distinct and isolated population of bighorn. The Peninsular bighorn ranges from the San Jacinto Mountains, California, southward through the Santa Rosa Mountains and the Borrego area and continuing into Baja California, Mexico. The area is bounded to the north by Interstate 10 and to the East by the Salton Sea. As described above, the Service's definition of the Peninsular Ranges population of desert bighorn sheep coincides with the distribution of the subspecies *O. c. cremnobates* accepted by the California Department of Fish and Game.

The Peninsular bighorn is similar in appearance to other desert bighorn sheep. Pelage is pale brown and permanent horns, becoming rough and scarred with age, vary from yellowish-brown to dark brown. Horns of the male are massive and coiled; in females they are smaller and not coiled. In comparison to other desert bighorn, the Peninsular bighorn is generally described as having paler coloration and larger and heavier horns that are moderately divergent at the base (Richard Weaver, California Department of Fish and Game (retired), pers. comm, 1992).

The population occurs along desert slopes of the Peninsular Ranges from the vicinity of Palm Springs south into northern Baja California, Mexico. Typical terrains occupied by the Peninsular bighorn is hot and dry desert regions where land is rough, rocky, sparsely vegetated and characterized by steep slopes, canyons, and washes. Most of these sheep live between 300 and 4,000 feet (91 and 1,219 meters) in elevation where average annual precipitation is less than 4 inches (10 centimeters) and daily high temperatures average 104° in the summer (Bighorn Institute 1990a). Caves and tree shelters are used during inclement weather and to escape disturbance. Lambing areas are associated with ridge benches or canyon rims adjacent to steep slopes or escarpments.

In the early 19th century, bighorn sheep in North America numbered between 1,500,000 and 2,000,000, but today total approximately 40,000 (Bighorn Institute 1990b, Buechner 1960). In California, bighorns have been extirpated from 16 mountain ranges in the past 40 years, leaving approximately 4,500 to 4,750 bighorn in California at present (Bighorn Institute 1990b; Vernon Bleich, Wildlife Biologist, California Department of Fish and Game, presentation to Desert Bighorn Council, April 3, 1991).

Weaver (1989) recalls that the Peninsular bighorn was once described as having the most dense and stable population of all bighorn sheep in California. However, the Peninsular bighorn has declined to fewer than 400 individuals, reduced from estimates of 1,171 in 1979. The population currently occurs in seven mountain ranges in California, located in Riverside and eastern San Diego Counties. It is presumed extirpated from the Fish Creek Mountains (western Imperial County) and Sawtooth Range (San Diego County). Estimated numbers of bighorns in specific mountains are as follows: San Jacinto Mountains (15), Santa Rosa Mountains (northern and southern portions) (120), Pinto/Inkopah Mountains (10), Corrizo Gorge (25), Vallecito Mountains (20), Coyote Canyon (100), and Borrego Canyon/Tubb Canyon/Pinyon Ridge (90) (Anza-Borrego Desert State Park, unpublished data 1990; Bighorn Institute, unpublished data). The California Department of Fish and Game's 1979 estimates were San Jacinto Mountains (280), Santa Rosa Mountains (northern and southern portions) (500), Pinto/Inkopah Mountains (20), Corrizo Gorge (83), Vallecito Mountains (19), and Coyote Canyon/Borrego Canyon/Tubb Canyon/Pinyon Ridge (165).

Approximately 20 individuals are in captivity at the Bighorn Research Institute in Palm Desert, California. The Bighorn Institute, a private, nonprofit organization, was established in 1982 to initiate a research program for the Peninsular bighorn. The Living Desert, an educational and zoo facility also located in Palm Desert, California, maintains a group of 10 to 12 Peninsular bighorn sheep at its facility.

No comprehensive population estimates are available for Baja California, Mexico. Although Alvarez (1976) estimated between 4,500 and 7,850 Peninsular bighorns in Baja California, preliminary surveys conducted by the Bighorn Institute in 1990 suggest that these numbers are over-estimated and that there are probably between 1,500 and 2,500 Peninsular bighorns in Mexico (James DeForge, Director, Bighorn Institute, pers. comm., 1991). Researchers have recognized that bighorn sheep numbers have been declining in Mexico, even to critical numbers in some places (Alvarez 1976). By Presidential decree, the hunting season in Baja California was closed in 1991.

Depressed recruitment, coupled with habitat loss and degradation and other factors, have contributed to the decline of the population. Specific recruitment data are unavailable for the majority of mountain ranges; however, available data indicate that recruitment rates are below those necessary to maintain the current population level. Approximately 90 percent of lambs die between 2 and 4 months of age in the Santa Rosa Mountains owing to bacterial pneumonia (Weaver 1989). A survey conducted in 1990 by the Bighorn Institute indicated that no lambs born in the spring of 1990 in the northern portion of the Santa Rosa Mountains survived. These sheep have declined from 150 individuals in 1972 to 41 adult animals in 1990. More than half of these remaining animals were released from the Bighorn Institute and included captive and

rehabilitated animals (Bighorn Institute 1990b).

The southern Santa Rosa Mountains area has also had significant lamb mortality, with only one lamb counted in a 1982 survey by the California Department of Fish and Game (DeForge and Scott 1982). High lamb mortality has been documented from the San Jacinto Mountains (DeForge and Scott 1982) and the Jacumba and Inkopah Mountain ranges since the 1970s (Jorgensen, undated). Preliminary surveys in northern Baja California suggest that bighorn sheep in Mexico are also experiencing high lamb mortality (DeForge, pers. comm., 1991).

Several development projects, long term drought, and grazing by domestic livestock also threaten the population. Much of the land occupied by the Peninsular bighorn is in public ownership on lands administered by the Bureau of Land Management (Bureau). the U.S. Forest Service, or the State of California. Grazing allotments granted by these two Federal agencies may affect bighorns.

Previous Federal Action

The September 18, 1985, **Federal Register** (50 FR 37958) Animal Notice of Review included *Ovis canadensis cremnobates* as a category 2 candidate for listing. Category 2 species are those species for which information in the Service's possession indicate that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The January 6, ,1989, **Federal Register** (54 FR 554) Notice of Review also included the subspecies as a category 2 candidate species. In 1990, the Service inititated an internal status review of the subspecies.

On July 15, 1991, the Service received a petition from the San Gorgonio chapter of the Sierra Club to list the Peninsular bighorn sheep as an endangered species. This petition requested that the Service list either through emergency or normal procedures, the Peninsular bighorn throughout its entire range, or at least the sheep in the Santa Rosa and San Jacinto Mountains. Another petition to list the United States segment of this population was received on October 31, 1991, from Natureguard of Redondo Beach, California. At the time the July 15, 1991, petition was received, the Service had already completed an internal status review of the species. In accordance with section 4(b)(3)(A) of the Act, on December 30, 1991, the Service found that substantial information had been presented in the July 15, 1991, petition and otherwise available to the Service indicating that the petitioned action may be warranted. The October 31, 1991, petition was regarded as a second petition and a separate finding was not made. The Service's review of the species' status found that sufficient information on biological vulnerability and threats is available to support a proposal to list the Peninsular Ranges population of bighorn sheep as endangered. Although the findings of the Service's status review changed the candidate status of this species from a category 2 to a category 1, this change was inadvertently omitted from the November 21, 1991, Animal Notice of Review (56 FR 58804). This proposed rule reflects the Service's finding at the conclusion of the status review and constitutes the 1-year finding for the petitioned action that proposing to list the Peninsular bighorn sheep is warranted.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The Act defines species to include subspecies and any distinct population segment of any vertebrate fish or wildlife that interbreeds when mature. The factors and their application to the Peninsular Ranges population of bighorn sheep (*Ovis canadensis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Peninsular bighorn sheep are located on Peninsular Ranges located in San Diego and Riverside Counties, California, and extending into Baja California, Mexico. They are presumed extirpated from Fish Creek Mountains (Imperial County) and Sawtooth Range (San Diego County). In the United States, the number of individuals has declined from an estimated 1,171 in 1979 to less than 400 in 1990. Preliminary status surveys in Mexico estimate between 1,500 and 2,500 Peninsular sheep. Habitat loss and degradation in the range of the population threaten its continued existence. The proliferation of residential communities, development of transportation corridors, water development projects, vehicular and pedestrian recreational uses, and historic mining operations have contributed to the decline of suitable habitat. In the United States, much of the land occupied by the Peninsular bighorn sheep is in a checkerboard pattern of public/private ownership. However, the Bureau and Forest Service continue to coordinate land exchanges with landowners to acquire lands beneficial to Peninsular bighorn sheep. Leasing of grazing allotments held by these agencies may affect bighorns, since livestock compete with bighorns for food and water in addition to having a potential for carrying disease (see Factor C.)

Several development projects are proposed within the privately-owned portions of land within the range of the Peninsular bighorn sheep. Two projects are proposed to be located adjacent to the Bighorn Institute and may have an adverse effect on the success of certain Institute operations. Further development could adversely affect the bighorn by reducing available habitat, introducing a variety of disturbance factors, and fragmenting natural corridors within the range of the population. In addition, habitat degradation probably contributes additional stress to the sheep, making them more susceptible to disease and reproductive failure.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Sport hunting of desert bighorn sheep has occurred throughout history. Currently desert bighorn sheep populations are relatively low in relation to the demand for desert bighorn hunting opportunities in North America, and few areas are open to hunting. Many states utilize a lottery or auction system for allocating permits. In terms of trophy hunting, it is one of the most highly sought big game species in North America. Sheep have been protected in California since 1873; however, limited sport hunting of *Ovis canadensis nelsoni* has occurred since 1987. No legal hunting of the Peninsular bighorn sheep occurs. Poaching is known to occur; however, the extent of poaching is not known. In Mexico, regulated hunting of the Peninsular bighorn sheep occurred in recent years. The government of Mexico has shown recent concern that the number of sheep is declining and by Presidential decree closed the hunting season beginning in 1991. Approximately seven hunting permits per year may still be issued. Anecdotal information suggests that poaching is significant in Mexico.

C. Disease or Predation

Bighorn sheep are susceptible to a variety of bacterial, fungal, and viral infections (Clark *et al.* 1985, Turner and Payson 1983, DeForge *et al.* 1982) and may be experiencing an immune system deficiency. Lambs and older sheep may be more susceptible to diseases. Numerous endoparasites and ectoparasites have been documented (Lopez-Fonseca 1979, Russi and Monroe 1976).

The relationship between disease and factors such as stress, density, competition, water availability, and disturbance are not well investigated (Allen 1980, Russi and Monroe 1976). Disease manifestation probably occurs during stressful periods such as high or low population levels, reproductive activity, low nutrient availability, and climatic stress (Taylor 1976, Turner and Payson 1982). Wehausen *et al.* (1987) investigated recruitment data from 1962 to 1982 in the Santa Rosa Mountains. During 1962 to 1976, lamb:ewe ratios averaged 39.5:100 as compared to 15.7:100 from 1977 to 1982. He found a recruitment rate of 16–18 lambs:100 ewes necessary for population maintenance. Similarly McQuivey (1978) reported 26 lambs:100 ewes necessary for population stability, although Wehausen *et al.* (1987) suggests that the McQuivey's ratio should actually be 20 lambs:100 ewes. Lamb survival appears to be the driving variable for recruitment rates (Wehausen *et al.* 1987). The most recent information available to the Service reveals that the majority of ranges in the Peninsular Mountains are not experiencing sheep recruitment rates sufficient to maintain themselves. For example, the northern Santa Rosa Mountains had no lamb survival in 1990. These areas consist primarily of older animals, and death owing to old age represents a significant portion of the total deaths, resulting in a declining status.

Depressed recruitment throughout most of the Peninsular bighorn range, owing to significant mortality of lambs, is probably linked to a disease epizootic. In the northern Santa Rosa Mountains, excessive mortality of lambs has occurred since 1977 and is estimated at 90 percent for lambs between 2 and 4 months of age (Weaver 1989). DeForge *et al.* (1982) provided evidence that lamb mortality in the Santa Rosa Mountains was due to pneumonia. Bacterial pneumonia is usually secondary to damage caused by another agent such as a virus, parasite, or environmental stress that lowers an animal's resistance to disease. DeForge and Scott (1982) reported serological evidence that a combination of parainfluenza-3 (PI–3), bluetongue (BT), epizootic hemorrhagic disease (EHD), and contagious echthyma (CE) viruses may be the initiating factors to pneumonia in the Santa Rosa Mountains. In addition to exposure to the above mentioned diseases, Jessup (Veterinary Medical Officer, California Department of Fish and Game, *in litt.*, 1991) reports that antibody titers to bovine respiratory syncytial virus (BRSV) have been found in at least one range, and several pathogenic bacteria have been isolated from sick lambs. In addition to disease, nutrition, competition, predation, climatic changes, and human impacts may also be contributing factors to high mortality. Vaccination experiments have been conducted for BT and PI–3. Vaccines for PI–3 have been used with limited success in captive and wild sheep.

Domestic and feral cattle can act as disease reservoirs for bighorn sheep. Several viruses discovered in sick bighorn lambs were non-native and thought to be introduced by domestic livestock (Jorgensen 1987). The potential role of livestock in disease transmission is not well understood. The Anza-Borrego Desert State Park, which borders Riverside County to the north and extends south to just north of Baja California, Mexico, completed a project to remove 119 feral cattle from the Park in 1990. Six viruses were detected in these cattle. Blood samples taken from cattle grazing in allotments adjacent to the Peninsular bighorn sheep habitat within the Anza-Borrego Desert State Park have contained several virsuses. Despite the removal of cattle from the Park, the sheep numbers continue to decline. Peninsular bighorn sheep in Mexico also show exposure to common viral and bacterial diseases (DeForge, pers. comm., 1991); however, more work is needed to determine the extent of disease. Other livestock may transmit diseases as well. Domestic sheep harbor *Pasteurella* sp. bacteria that can skill bighorn, and close contact results in transmission to and the subsequent death of most or all of the exposed bighorns (State of California 1988). In 1988, all animals (approximately 65) from a relocated group of *Ovis canadensis californiana* died as a result of pneumonia believed to have been contracted from one domestic sheep (Weaver 1989). In 1981, the herd of *O. c. california* at Lava Beds National Monument (approximately 42 animals) died of pneumonia over a 1-month period following contact with domestic sheep (State of California 1988).

Predation from natural predators, such as coyotes, bobcats, mountain lions, foxes, eagles, and free-roaming dogs has been documented. Although predation is assumed to be insignificant to most populations, it could become significant to small populations weakened by disease and malnutrition. In recent years, mountain lion kills have increased in the northern Santa Rosa Mountains (DeForge, pers. comm., 1991). Owing to the nature of bighorn habitat, most predation is opportunistic, and predators do not rely heavily on Peninsular bighorns for survival. Sheep encounters with domestic and wild dogs are likely to increase with an increase in development.

D. The Inadequacy of Existing Regulatory Mechanisms

The California Department of Fish and Game has listed *Ovis canadensis cremnobates* as rare or threatened since 1972. Pursuant to the California Fish and Game Code and the California Endangered Species Act, it is unlawful to import or export, take, possess, purchase, or sell any species or part or product of any species listed as endangered or threatened. Permits may be authorized for certain scientific, educational, or management purposes. The California Act requires that State agencies consult with the Department of Fish and Game to ensure that actions are not likely to jeopardize the continued existence of any listed species. State protection does not include habitat safeguards available under section 7 of the Federal Act. The lack of State projects within the bighorn habitat has led to few, if any, consultations under the California Act (Vernon Bleich, Wildlife Biologist, California Department of Fish and Game, pers. comm., 1991).

The Fish and Game Code also provides for management and maintenance of bighorn sheep. The policy of the State is to encourage the preservation, restoration, utilization, and management of California's bighorn sheep.

The California Department of Fish and Game supports the concept of separating livestock from bighorns to create buffers to decrease disease transmission potentials, through purchase and elimination of livestock allotments. However, it has not been a policy of the Department to recommend removal of current livestock permittees (State of California 1988). Protection provided by the State Act has failed to reverse the population decline of the Peninsular bighorn.

Protection for the Peninsular bighorn in Mexico is limited, and it has been a recently hunted species. Presidential decree closed the hunting season in 1991. The Mexican population of *Ovis canadensis* was listed as an appendix II species on July 1, 1975, under the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES). This convention, as implemented by the Act and various regulations (50 CFR part 23), imposes restrictions on the importation and exportation of appendix II species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Owing to the small population size and limited distribution of Peninsular bighorn sheep, factors such as drought, disturbance, inbreeding, pesticides, and other contributing sources of mortality may affect the population.

Drought, disturbance at watering sites, water withdrawal, and competition from domestic and introduced species limits the amount of water available to and utilized by the sheep. Bighorn sheep exhibit a seasonal pattern of distribution, primarily affected by forage and water availability. Water is available via tinajas, spings, and guzzlers. During late summer and early winter (July-November), when water requirements and breeding activities are at a peak, sheep tend to concentrate near watering places, particularly as tinajas and springs dry up. During this time, sheep depend on a reliable water source and vegetative diversity. Bighorns require a quantity of water approximately equal to four percent of their body weight (one gallon) per day during summer months and a dependable water supply is needed every 2 miles (Bleich 1987, Blong and Pollard 1968). When water is not available in sufficient quantities, older sheep and lambs die, as they require more water and food in hot, dry weather. Wehausen *et al.* (1987) found a strong correlation between fall and winter precipitation and lamb recruitment the following summer or fall. The consecutive 5-year drought in California has undoubtedly affected the State's bighorn sheep. In addition, a decrease in available water and subsequent concentration of sheep around watering sites can lead to overgrazing, increased density and subsequent stress, and disease transmission.

Interspecific competition for food and water has contributed to the decline of desert bighorn sheep. Mule deer, collared peccary, black-tailed jack rabbit, domestic sheep, cattle, burros, and goats may compete with bighorn (Monson and Sumner 1980). Mule deer (*Odocoileus hemionus*) and bighorn sheep overlap in range during winter months. However, since the bighorn sheep prefers rougher terrain, their use of specific habitat rarely overlaps. Where their ranges do overlap, food preferences tend to be different, with the bighorn sheep preferring grasses and the deer preferring browse. Where ranges overlap and conditions allow for large deer herds to persist, deer can destroy vegetation by trampling. No information suggests that competition from deer has significantly limited the bighorn. Although healthy bighorn populations can coexist with native competitors, they can be expected to be more susceptible to such competition as their populations decline and they are stressed by other factors.

Burros also prefer a flatter terrain than bighorn sheep. The range of food consumed by burros is generally broader; however, during the dry season competition near watering sites may significantly limit the available food supply for bighorn sheep. Burros tend to be destructive, pulling vegetation out by the roots. In addition, burros tend to drink more water and spend more time at watering sites. Because bighorn will often wait until the burros have left, the amount of water consumed by the bighorn sheep may be decreased. Burros may also foul a water source, further diminishing its use by bighorns.

Domestic livestock (cattle and sheep), in addition to transmitting diseases, compete with bighorn sheep for water and food, particularly grasses. Permitted grazing occurs on public lands administered by the Bureau and the Forest Service within the range of the Peninsular bighorn.

Bighorn sheep are sensitive to disturbance and will withdraw form an area if disturbance is great enough. The presence of a disturbing factor may interfere with the sheep's water use, even if it is abundant and permanent, which can affect survival, particularly of lambs and older animals. Ewes will seldom give birth in an area disturbed by outsiders. Disturbance factors may include low flying aircraft, vehicular traffic, and human activities. The degree of disturbance depends on topography and the extent, type, and duration of disturbance (Hamilton *et al.* 1982, Miller and Smith 1985). DeForge *et al.* (1981) suggested the human activity (e.g., road construction, early mining activities, introduction of feral animals, and grazing of livestock) may have been a contributing factor in the loss of the China Lake (California) Naval Weapons Center desert bighorn sheep (*Ovis canadensis nelsoni*). Permanent human occupancy will likely cause bighorns to move away from an area. Bighorn sheep are generally reluctant to move across open country away from normal habitats.

The loss of dispersal corridors and fragmentation and bisection of the bighorn's habitat, coupled with increased habitat loss, disturbance, and decreased availability of water, have isolated certain portions of the population. Few individuals, along with the lack of genetic exchange with sheep from other regions, will lead to inbreeding. Inbreeding and the resultant loss of genetic variability can result in reduced adaptiveness, viability, and fecundity, and may result in local extirpations. Although inbreeding has not been directly demonstrated in the Peninsular bighorn sheep, the number of sheep occupying many areas is critically low. The minimum size at which an isolated group can be expected to maintain itself without the deleterious effects of inbreeding is not known. Recruitment clearly is not adequate to stabilize the extant population (Krausman and Leopold 1986). Researchers suggest that a minimum effective population size of 50 is necessary to avoid short-term inbreeding depression, and 500 to maintain genetic variability for long-term adaptation (Franklin 1980). The Bureau of Land Management (1986) considers 100+/−20 desert bighorn sheep, with normal age and sex structures, to be a viable population. Even with this conservative criterion, these numbers suggest that Peninsular bighorn sheep in many areas are not able to maintain genetic diversity, population viability, or preserve fitness. Berger (1990) studied bighorn populations in the southwestern United States and found that all populations with less than 50 individuals became extinct within 50 years. Berger concluded that extinction in populations of this size cannot be overcome without intensive management, because 50 individuals, even in the short-term, do not constitute a minimum viable population size. Four of the seven U.S. mountain ranges supporting Peninsular bighorn sheep have fewer than 50 animals.

Turner (1978, 1979) reported high levels of organochlorines and PCB residues in bighorn lambs, suggesting chronic exposure to pesticides commencing with the lamb's first suckling or before. However, none of the levels were significant enough to cause acute debilities, presumably because of

the sheep's low level within the trophic structure as herbivores.

Other causes of mortality such as old age, falls, fights between males, and road kills could affect the continued survival of groups that are critically small and experiencing severe reductions in recruitment.

Any one of the factors discussed above or other natural or unnatural consequences could, at any time, result in losses that would be irreversible and reduce the population to a point at which natural recovery is no longer considered achievable.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this population in determining to propose this rule. Based on this evaluation, the preferred action is to list the Peninsular bighorn as an endangered species. Disease, causing excessive lamb mortality, is affecting the majority of the sheep within the population, resulting in groups too small to be considered viable and recruitment rates insufficient to maintian current status. Although the Peninsular bighorn population has been declining since at least 1972, the rate of decline has increased in recent years. Additional losses in certain mountian ranges could be irreverisible and reduce the population to a point at which recovery is no longer feasible without massive management intervention. Federal listing of the Peninsular bighorn would provide habitat protection through the section 7 consultation process and would result in Federal participation in recovery activities, including the development of a coordinated recovery plan and the allocation of funds.

As previously mentioned, the Mexican population of the Peninsular population has been protected from hunting since 1991. Apparently this action was based on information the Mexican government received that demonstrated a recent decline in the number of sheep found in Baja (Mexico). The Service will make a direct request to the Government of Mexico for any information that is available on its population of Peninsular bighorns. As the proposed rule is based on the best available information to the Service, any new information which demonstrates that the Mexican population has stable or increasing numbers may prove this proposal to be unwarranted. If so, the Service will withdraw this proposal.

Status of Peninsular Bighorn Sheep Currently Held in Captivity

Under section 9(b)(1) of the Act, certain prohibitions applicable to listed species would not apply to Peninsular bighorn sheep held in captivity or in a controlled environment on the date of publication of any final rule, provided that such holding and subsequent holding or use of sheep was not in the course of a commercial activity.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endagered or threatened. The Service finds that the designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to the sheep. All involved parties and major landowners are aware of the general location and importance of protecting the Peninsular bighorn sheep and its habitat. The identification of precise locations of bighorn sheep habitat that would result from the publication of detailed critical habitat maps and descriptions in the Federal Register would very likely lead to increased poaching of this highly prized game animal. As discussed under Factor B, some poaching is already occurring. Protection of habitat will be addressed through the recovery process and through the section 7 consultation process. The Service therefore finds that designation of critical habitat for the Peninsular bighorn sheep is not prudent at this time, because such a designation would increase the degree of threat from poaching or other human activities, and because it is unlikely to aid in the conservation of this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below:

Section 7(a) of the Endangered Species Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Endangered Species Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a proposed Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A development proposed in the Santa Rosa Mountains adjacent to the Bighorn Institute may require a permit from the U.S. Army Corps of Engineers pursuant to the Clean Water Act to conduct project-related activities within or adjacent to a desert wash on the project site. If a permit is required, the Corps of Engineers would be subject to the section 7 consultation requirements of the Act if the species becomes listed.

Several Federal land managers are responsible for administering lands occupied by the Peninsular bighorn. The Bureau of Land Management has a rangewide plan for management of habitat of the bighorn sheep on public lands. This is a comprehensive plan for inventory, management, monitoring, and research. The Bureau of Land Management maintains land in the Santa Rosa Mountains and the Jacumba/Inkopah Mountain ranges. Much of the bighorn habitat is contained in a checkerboard pattern of public and private land ownership. In addition to the Bureau, the Forest Service has been consolidating much of these lands into public ownership. Grazing allotments have resulted in some cattle entering Federal lands and competing for resources with the bighorns. In addition to competing for food and water, domestic cattle on or adjacent to areas used by bighorns may introduce or transmit disease. Other Federal land managers within the range of the Peninsular bighorn include the Bureau of Indian Affairs, the Bureau of Reclamation, and the Department of Defense. These agencies would be required to consult with the Service if any activities they authorize, fund, or

carry out may affect the Peninsular bighorn sheep.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise lawful activities.

Increased recognition and an active recovery program would provide a means to ensure survival for the Peninsular bighorn sheep. Available funding would be used on research to determine causes, treatment, and prevention of lamb mortality, and range maintenance projects to benefit the sheep.

The Mexican population of *Ovis canadensis* was listed as an Appendix II species on July 1, 1975, under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This convention, as implemented by the Act and various regulations (50 CFR part 23), imposes restrictions on the importation and exportation of appendix II species.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Peninsular Ranges population of desert bighorn sheep;

(2) The location of any additional ranges of this population and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and size of this population; and

(4) Current or planned activitites in the subject area and their possible impacts on this population.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rule is available upon request from the Fish and Wildlife Service (see **ADDRESSES** section).

Author

The primary author of this rule is Lynn Wilson Oldt, Fish and Wildlife Biologist, 2140 Eastman Avenue, suite 100, Ventura, California 93003.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of the chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Mammals", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:							
*	*	*	*	*	*	*	*
Sheep, bighorn.	*Ovis canadensis*..	U.S.A. (Western conterminous states), Canada (southwestern), Mexico (northern).	U.S.A.: Peninsular Ranges of CA; Mexico (BC).	E		NA	NA
*	*	*	*	*	*	*	*

Dated: April 21, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Proposed Rule for Seven Desert Milk-vetch Taxa from California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended, (Act) for five plants: Lane Mountain milk-vetch (*Astragalus jaegerianus*), Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), Fish Slough milk-vetch (*Astragalus lentiginosus* var. *Piscinensis*), Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), and triple-ribbed milk-vetch (*Astragalus tricarinatus*); and threatened status for shining milk-vetch (*Astragalus lentiginosus* var. *micans*) and Sodaville milk-vetch (*Astragalus lentiginosus* var. *sesquimetralis*). Many taxa in the genus *Astragalus*, including the seven proposed here for listing, are endemic to habitats with specific substrate or hydrologic conditions and are therefore naturally limited in distribution by the availability of habitat. Three of the taxa occur on sandy soils associated with desert dune systems, two are associated with moist alkaline flats or seeps, one occurs in desert washes, and one occurs on granitic soils within creosote bush (*Larrea tridentata*) scrub. The taxa are distributed within Inyo, Mono, Riverside, San Bernardino, and Imperial Counties within California; Mineral and Nye Counties in Nevada; and northeastern Baja California, Mexico.

The seven plant taxa are threatened by one or more of the following: grazing and trampling by livestock and feral burros, off-road vehicle (ORV) use, military training, trampling by recreational users, competition from alien plants, urban development, construction related to fisheries development, and alteration of soil hydrology. Several of the plants are also threatened with stochastic extinction by virtue of their small numbers and population size. This proposed rule, if made final, would extend the Act's protection to these plants. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by July 7, 1992. Public hearing requests must be received by June 22, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Office Supervisor, U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, suite 100, Ventura, California, 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Steven M. Chambers, Office Supervisor, at the above address, or at 805–644–1766 (commercial) or 983–6040 (FTS).

SUPPLEMENTARY INFORMATION:

Background

Astragalus jaegerianus (Lane Mountain milk-vetch), *A. lentiginosus* var. *coachellae* (Coachella Valley milk-vetch), *A. lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), *A. lentiginosus* var. *micans* (shining milk-vetch), *A. lentiginosus* var. *sesquimetralis* (Sodaville milk-vetch), *A. magdalenae* var. *peirsonii* (Peirson's milk-vetch), and *A. tricarinatus* (triple-ribbed milk-vetch) occur within the deserts of California and Nevada. All of them are adapted to habitats with specific substrate or hydrologic conditions that occur as inclusions within creosote bush (*Larrea tridentata*) scrub or sagebrush (*Artemisia* spp.) dominated communities in three deserts of southwestern North America. The southermost desert, the Sonoran (or Colorado) Desert, includes the southeastern corner of California and the Coachella Valley, and extends southward into Baja California. The Sonoran Desert occurs at elevations primarily below 610 meters (m) (2,000 feet (ft)), where a diverse mix of cacti and succulent plants comprise a significant component of the vegetation. To the north of the Sonoran Desert lies the Mojave Desert, with a transitional zone between these deserts occuring within the bounds of Joshua Tree National Monument. The Mojave Desert is primarily between 610 and 1220 m (2,000 and 4,000 ft) in elevation and is characterized by the presence of Joshua trees (*Yucca brevifolia*) scattered within creosote bush scrub. The Great Basin Desert covers most of Nevada as well as portions of Utah, Idaho, and Oregon. The southwesternmost extension of the Great Basin Desert in California extends southward along the east side of the Sierra Nevada range, where it intergrades with the Mojave Desert in the southern Owens Valley. The Great Basin Desert occurs above 1220 m (4,000 ft) and is characterized by the dominance of sagebrush. Descriptions of Mojave and Sonoran Desert plant communities can be found in Thorne (1982), Thorne (1986), Vasek and Barbour (1988), Burk (1988), and Rowlands *et al.* (1982). The sagebrush-dominated communities of the Great Basin Desert are described by Young *et al.* (1986), and Holland and Keil (1990).

The genus *Astragalus*, in the pea family (Fabaceae), is well-represented with close to 400 species in North America. In California, the genus is best developed in the deserts and bounding desert ranges. Species are distinguished on the basis of shape and size of the pod, and its inflation, compression, and degree of development of the septrum (a partition between two halves of the pod).

The first collection of Lane Mountain milk-vetch (*Astragalus jaegerianus*) was made by Edmund C. Jaeger in 1939 "2 miles south of Jay Mine", north of Barstow, Mojave Desert. The plant was first described by Philip A. Munz (Munz 1941) based on a collection he made from the same area. He made a second collection "15 miles north of Barstow on the road to Superior Dry Lake" (Munz 1941).

Lane Mountain milk-vetch is a wispy perennial that is somewhat woody at the base, with stems 3 to 5 decimeters (dm) (11.8 to 19.7 inch (in)) long growing in a zigzag pattern. Leaves have 7 to 12 silvery linear leaflets 5 to 25 millimeters (mm) (less than 1.0 in) long. The flowers are clay-colored to purple, or lighter with veins of a deeper color. Seedpods are pencil-shaped, linear, smooth, and 1.6 to 2.5 mm (0.6 to 1.0 in) long. This milk-vetch is unusual in that it grows within and is supported by branches of low-growing desert shrubs. Sightings made by Mark Bagley and Mary DeDecker indicate that the plant grows on low ridges of white decomposed granite, but not on other adjacent soil types (California Department of Fish and Game (CDFG) 1991). All currently known populations of Lane Mountain milk-vetch occur on Federal lands managed either by the Bureau of Land Management (Bureau) or the Department of Defense.

After the initial collections in 1939 and 1941, the plant was not seen again until it was rediscovered by Bagley, DeDecker, and John Chesnut in 1985; a total of 87 plants were counted (Bagley 1986). Bagley discovered two additional populations of Lane Mountain milk-vetch, totalling 42 individuals, in 1989

within 5 miles of where the two historic sites were located. Surveys conducted in 1991 resulted in locating a total of six individuals (Rutherford and Bransfield 1991, Bransfield *in litt.* 1991). Lane Mountain milk-vetch is threatened by ongoing military activities, as well as a pending proposal to expand the National Training Center at Fort Irwin onto adjacent Federal lands managed by the Bureau. It is also threatened with stochastic extinction by virtue of its restricted distribution and small population size. Sheep grazing may be a minor threat, as there are two ephemeral sheep grazing allotments on Bureau lands within the range of the plant.

The species *Astragalus lentiginosus* was first described by David Douglas in 1834 based on a specimen collected in the "subalpine ranges of the Blue Mountains [Oregon] of North-West America" (Abrams 1944). The epithet *lentiginosus* means "freckled" and refers to the mottled seed pod. Rydberg (1929) transferred out a number of taxa, including *Astragalus lentiginosus*, to the genus *Cystium*. However, this name was not widely accepted, and Abrams (1944), Barneby (1945), Jaeger (1941), and Munz (1974) continued to recognize *lentiginosus* under the genus *Astragalus*.

Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*) was first described by Rupert Barneby in Shreve and Wiggins (1964) based on a collection made by Alice Eastwood in 1913 near Palm Springs, Riverside County. The specimen had previously been identified as *Astragalus lentiginosus* var. *coulteri* by Barneby in the description of that taxon in 1945.

Coachella Valley milk-vetch is an erect winter annual or short-lived perennial 20 to 30 centimeters (cm) (7.8 to 11.8 in) tall and covered with white-silky hairs. The flowers are deep pink-purple, in a loose or dense 13 to 25-flowered raceme; the pods are strongly inflated, with leathery valves inflexed to form a complete septum.

The Coachella Valley milk-vetch is found on open sandy dunes and sandy flats within the creosote bush scrub community. The plant's distribution is restricted to the Coachella Valley, in Riverside County, between Cabazon and Indio. Less than 20 occurance of Coachella Valley milk-vetch are currently known. Five of these are located within the Coachella Valley Preserve, which is jointly managed by the Bureau, CDFG, the Service, and The Nature Conservancy (TNC); these localities are being monitored annually. Two occurances are on lands owned by the Agua Caliente Indian Reservation; one is on land owned by Southern California Edison (SCE), and the remaining occurences are on private lands. The primary threat to the Coachella Valley milk-vetch is habitat destruction due to continuing urban development in the Coachella Valley. Other threats include development of wind energy parks and recreational activities, particularly off-road vehicle use. The small size of the populations, particularly in drought years, leaves the Coachella Valley milk-vetch vulnerable to extinction from stochastic events. Surveys for the plant in 1987, a drought year, resulted in the location of less than 300 individuals (Barrow 1987a). Annual monitoring of 1 population showed a drop from 209 individuals in 1979 to 2 individuals in 1982 (CDFG 1991).

Shining milk-vetch (*Astragalus lentiginosus* var. *micans*) was first collected by Munz and John C. Roos at the lower slopes of sand dunes at the southeast end of Eureka valley, Inyo County, in 1954, and described by Barneby 2 years later (Barneby 1956). The plant is an erect white-silky perennial with a hardened base; the leaves range from 4.5 to 9.5 cm (1.8 to 3.7 in) long, and consist of 11 to 17 leaflets. The flowers are lavender to pale purple and arranged in loose, 20 to 35-flowered racemes; the pods are stiffly papery, inflated, and often angled upward to a distinct beak.

Shining milk-vetch is found at the base of open sand dunes within creosote bush scrub. The plant is restricted to two dune systems in Eureka Valley approximately 10 miles apart; the Eureka Dunes and the Saline Sand Spur. At Eureka Dunes, shining milk-vetch is associated with plicate coldenia (*Coldenia plicata*) as well as with two taxa endemic to that site and which are currently federally listed as endangered: Eureka dunegrass (*Swallenia alexandrae*) and Eureka Dunes evening primrose (*Oenothera avita* ssp. *eurekensis*). Several specimens of milk-vetch that were collected in Nye County, Nevada, in 1988 were tentatively identified as *Astragalus lentiginosus* var. *micans*, but the final determination has not been made (Teri Knight, Director of Science, TNC, Nevada, pers. comm., 1991).

The Eureka Dunes are within an Area of Critical Environmental Concern (ACEC) on Federal lands managed by the Bureau. The Bureau has taken a number of measures—including signing and increasing ranger patrols—to protect this site from illegal off-road activity, which had been a popular recreational activity in the area until 1979. Nevertheless, because of the limited distribution of the population and the limited resources the Bureau can direct towards monitoring the site, illegal off-road vehicle activity remains a threat. Other threats to shining milk-vetch include competition with the alien plan Russian thistle (*Salsola iberica*).

Fish Slough milk-vetch (*Astragalus lentiginosus* var. *piscinensis*) was first collected by DeDecker in 1974, and described by Barneby 3 years later (Barneby 1977). The plant is a prostrate perennial covered with stiff appressed hairs, with few branching stems that are up to 1 meter (m) long, and leaflets reduced to only two pairs laterally with a greatly elongated terminal leaflet longer than the leaf-stalk. The lavender flowers are arranged in loose but short 5 to 12-flowered racemes; the pods are papery, strongly inflated with complete septum, and contract to an incurved beak.

Fish Slough milk-vetch is restricted to a 10-mile stretch of alkaline flats parelleling Fish Slough, a desert wetland ecosystem, in Inyo and Mono Counties, California. A recent study noted that the plant seems to be restricted to seasonally moist alkaline flats which support a *Spartina-Sporobolis* association, and is absent from nearby lower, wetter alkali habitats (Ferren 1991a). Most of the plants are found in three concentrations near the northern end of its range, but scattered individuals are found farther downstream as far as McNally Canal. Surveys conducted over nearly a 10-year period identified 8 populations totalling about 700 plants on lands managed by the Bureau and by the Los Angeles Department of Water and Power (DWP). Fish Slough milk-vetch is threatened with alternation and destruction of habitat resulting from construction related to fisheries enhancement activities, off-road vehicle activity, discing for agricultural purposes, livestock grazing, predation by rabbits, and possibly groundwater pumping (Ferren 1991b).

Sodaville milk-vetch (*Astragalus lentiginosus* var. *sesquimetralis*) was first collected by W.H. Shockley in 1882 near Sodaville, Mineral County, Nevada, and described by Per Axel Redberg as *Cystium sequimetrale* in 1929 (Barneby 1945). The genus *Cystium*, however, was not recognized by other botanists, and in 1945, Barneby placed the plant as a variety of *lentiginosus* in the genus *Astragalus*. The plant is a prostrate perennial with straw-colored stems up to 8 dm (31 in) long and covered with silky hairs; the leaflets are 6 to 18 mm (0.2 to 0.7 in) long. The light purple flowers have white silky calyces 7 to 8 mm (0.3 in) long, arranged on 6 to 12-flowered racemes; the pod is moderately

inflated, 1.6 to 2.6 cm (0.6 to 1.0 in) long, with an upwardly curved beak.

After its initial discovery, Sodaville milk-vetch was not seen again until 1977 when it was relocated by Margaret Williams at the type locality in Mineral County (Barneby 1977). A second location was also discovered by Williams in 1973 at Big Sand Spring, Inyo County, California, approximately 75 miles south of the type locality. A third location, near Cold Spring, Nye County, was discovered in 1980 by Arnold Tiehm (Nevada Natural Heritage Program 1991). The plant is restricted to powdery clay saline soils adjacent to springs. Typical alkaline seep species, such as seepweed (*Suaeda torreyana*), saltgrass (*Distichlis spicata*), and alkali ivesia (*Ivesia kingii*), are common associates.

The sizes of the Sodaville and Cold Spring populations in Nevada have not been estimated since 1978 and 1980, respectively; at that time, each was estimated to comprise several hundred plants. These two sites are on privately-owned parcels adjacent to Bureau lands and are threatened by habitat alteration and destruction resulting from off-road vehicle activity, and commercial development and associated roadside activity. Big Sand Spring is on Federal lands managed by the Bureau as an ACEC. The size of the population at Big Sand Spring was reduced to several hundred individuals in the early 1980's, but has increased since 1985 when an exclosure was constructed to eliminate grazing by feral burros and livestock. The site, however, is still threatened with habitat alteration and predation resulting from grazing by feral burros and livestock. Sodaville milk-vetch is also threatened with stochastic extinction due to small population size and numbers of individuals.

Peirson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*) was first described as *A. peirsonii* by Munz and Jean P. McBurney in 1932. The type was collected by Munz and Charles L. Hitchcock "from sand dunes between Holtville and Yuma" in Imperial County, and named after amateur botanist Frank W. Peirson (Barneby 1964). In 1944, Barneby recognized *A. peirsonii* as a junior synonym of a *A. niveus*, but then later described both as varieties of *Astragalus magdalenae* after studying additional collections (Barneby 1958). Peirson's milk-vetch is a stout, short-lived perennial reaching 2 to 7 dm (7.9 to 27 in) high; stems and leaves are covered with fine silky hairs; leaves are 5 to 15 cm (2.0 to 5.9 in) long, with 8 to 12 small oblong leaflets. The flowers are dull purple, arranged in 10 to 17-flowered racemes; the pods are 2 to 3.5 cm (0.8 to 1.4 in) long, inflated, with a triangular beak. The variety *peirsonii* is separated from two other varieties of *Astragalus magdalenae* on the basis of the number of leaflets, the length of the peduncles, and the diameter of the pods. With a length of 4.5 to 5.5 mm (less than 0.2 in), Peirson's milk-vetch has the largest seeds of any *Astragalus* in North America (Barneby 1964).

Peirson's milk-vetch occurs on slopes and hollows of windblown dunes in the Sonoran Desert. Of the taxa included in this proposal, *Astragalus magdalenae* var. *peirsonii* potentially has one of the widest distributions, which, according to Shreve and Wiggins (1964) and Munz (1974) ranges from Borrego Valley in eastern San Diego County to Yuma on the California-Arizona border, and south into northeastern Baja California. The plant, however, has not been seen in Borrego Valley since 1959; surveys in 1978 failed to detect it there (Spolsky 1978). Another historic location, west of the Salton Sea, cannot be confirmed. Peirson's milk-vetch is currently known to occur along the north and west flanks of the Algodones Dunes extending into northeastern Baja California. The Algodones Dunes are primarily on Federal lands managed by the Bureau. The primary threat to Peirson's milk-vetch is the alteration of habitat from off-road vehicle activity. The plant is also threatened with stochastic extinction due to the limited size of its populations. Surveys for the plant on the Algodones Dunes were done in 1978 and 1990. While the techniques used in the two surveys do not permit direct comparison, they indicate a downward trend in population size (Westec 1977, Ecos 1990).

Triple-ribbed milk-vetch (*Astagalus tricarinatus*) was first described by Asa Gray in 1876, based on a specimen collected by Charles C. Parry at Whitewater, Riverside County (Abrams 1944). In 1927, Rydberg renamed the plant *Hamosa tricarinata*. This name has not been recognized by other botanists, however, who continue to recognize the plant as *A. tricarinatus* (Jaeger 1941, Jepson 1936, Shreve and Wiggins 1964, Munz 1974). Triple-ribbed milk-vetch is short-lived perennial, reaching 20 to 40 cm (7.9 to 15.7 in) in height, with leaves 3.5 to 7 cm (1.3 to 2.7 in) long and silvery strigose on the upper surface. The flowers are white or pale cream-colored, arranged in loose 6 to 17-flowered racemes. The pod is narrow and 2 to 4 cm (0.8 to 1.6 in) long, and distinctly three-ribbed or cordate in cross section.

Triple-ribbed milk-vetch is known from only four sites in the Coachella Valley, occuring either on sandy and gravelly soils of dry washes, or on decomposed granite or gravelly soils at the base of canyon slopes (Barrows 1987b). Two sites are within an area which is designated as an ACEC by the Bureau, and also jointly managed as a Preserve by the Bureau and TNC. In 1984, one of these sites that had supported less than 10 plants was bulldozed during maintenance of a pipeline. Only one plant was observed in the same site in 1987, and none have been at either of the two sites since then (Barrows 1987b). The type locality (Whitewater Canyon) was surveyed in 1987, with no plants being found. A fourth population was discovered by Jon Stewart in 1985 near Aqua Alta Canyon at the south end of the Coachella Valley, but the plant has not been seen at this site since then. While no living plants of triple-ribbed milk-vetch are currently known, the long viability of other legume seeds holds out the likelihood that the plant will reappear with favorable climatic conditions in future years. Two of the historic sites receive protection by their inclusion in the Preserve, but the other two sites are currently unprotected, and are threatened by habitat destruction due to off-road vehicle activity.

In addition to specific threats mentioned for each of these taxa, possibly all have experienced a reduction in population size owing to a series of drought years in southern California. Population sizes may expect to increase in climatically favorable years, but only if seed production is maintained at some critical level.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Astragalus jaegerianus* was considered to be endangered, and *A. lentiginous* var. *micans* was considered to be threatened. The Service published a notice in the July 1, 1975, Federal Register (40 FR 27823), of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention

thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant species, to be endangered species pursuant to section 4 of the Act. *Astragalus jaegerianus* and *A. lentiginosus* var. *sesquimetralis* were included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the portion of the June 6, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review of plants on December 15, 1980 (45 FR 82480). This notice included *Astragalus jaegerianus*, *A. lentiginosus* var. *coachellae*, *A. lentiginous* var. *micans*, *A. lentiginous* var. *piscinensis*, *A. lentiginosus* var. *sesquimetralis*, and *A. magdalenae* var. *peirsonii* as Category 1 taxa. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, the Service published in the **Federal Register** a supplement to the Notice of Review (48 FR 53640), in which *A. jaegerianus*, *A. lentiginosus* var. *micans*, and *A. magdalenae* var. *peirsonii* were included as Category 2 candidates. Category 2 taxas are those for which data in the Service's possession indicate listing is possibly appropriate, but for which substantial data on bilogical vulnerability and threats are not currently known or on file to support proposed rules. The plant notice was again revised on September 27, 1985 (50 FR 39526), and on February 21, 1990 (55 FR 6184). In both of these notices, all four varieties of *Astragalus lentiginosus* were included as Category 1 candidates, while *A. jaegerianus* and *A. magdalenae* var. *peirsonii* were included as Category 2 candidates. *Astragalus tricarinatus* was included in the February 21, 1990, notice for the first time as a Category 2 candidate. *Astragalus jaegerianus* and *Astragalus magdalenae* var. *peirsonii* are being included in this proposal on the basis of new information gathered during surveys performed during 1990 and 1991 that have resulted in their elevation to a Category 1 status. *Astragalus tricarinatus* is being included in this proposal after a review of existing information indicated that the species should be elevated to a Category 1 status and that listing may be warranted.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Astragalus jaegerianus*, *Astragalus lentiginosus* var. *micans*, and *Astragalus lentiginosus* var. *sesquimetralis*, because the 1975 Smithsonian report had been accepted as a petion. On October 13, 1983, the Service found that the petitioned listing of these species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of this proposal constitutes the warranted finding for these species, as well as for *Astragalus lentiginosus* var. *coachellae*, *A. lentiginosus* var. *piscinensis*, *A. magdalenae* var. *peirsonii*, and *A. tricarinatus*.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). The threats facing these seven taxas are summarized in Table 1.

The factors and their application to *Astragalus jaegerianus* Munz (Lane Mountain milk-vetch), *Astragalus lentiginosus* Dougl. var. *coachellae* Barneby (Coachella Valley milk-vetch), *Astragalus lentiginosus* Dougl. var. *micans* Barneby (shining milk-vetch), *Astragalus lentiginosus* Dougl. var. *piscinensis* Barneby (Fish Slough milk-vetch), *Astragalus lentiginosus* Dougl. var. *sesquimetralis* (Rydsg.) Barneby (Sodaville milk-vetch), *Astragalus magdalenae* Greene var. *peirsonii* (Munz & McBurn.) Barneby (Peirson's milk-vetch), and *Astragalus tricarinatus* Gray (triple-ribbed milk-vetch are as follows:

A. The Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range.

All seven taxa are naturally limited in distribution owing to the specific soil and/or hydrologic conditions of the habitats in which they are found.

TABLE1.—SUMMARY OF THREATS

	Feral burros	Cattle grazing	Alien plants	ORV activity	Military activity	Develop activity	Limited numbers	Other
Astragalus jaegerianus					X		X	
A. lentiginosus var. coachellae				X				
A. lentiginosus var. micans			X	X				
A. lentiginosus var. piscinensis		X		X				[1]X
A. lentiginosus var. sesquimetralis	X	X		X		X		
A. magdalenae var. peirsonii				X			X	
A. tricarinatus							X	

[1] Fisheries enhancement activities, agricultural discing, predation by rabbits, and groundwater pumping.

Any loss of their habitat or range may increase the change extirpation by stochastic (i.e., random) events.

Lane Mountain milk-vetch *Astragalus jaegerianus* is currently known from two sites that are within 5 miles of the historically known type locality. One site is located on the National Training Center (NTC) at Fort Irwin. The second site is 2 miles to the west, on Federal lands managed by the Bureau. The site

at the NTC is currently being degraded by military vehicle use (Bransfield *in litt.* 1991). The NTC is currently proposing to acquire 411 square miles of adjacent Bureau and private lands, which include the entire known and historical range of Lane Mountain milk-vetch (Bagley 1989). Lane Mountain milk-vetch is threatened by destruction of habitat by existing military training on the NTC. These threats could increase in intensity and extent if training activities also occur within the proposed acquisition area.

Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*) is currently known from about 20 sites in the Coachella Valley. Five of these sites are within the Coachella Valley Preserve that was established in 1986 to conserve habitat for the federally threatened Coachella Valley fringe-toed lizard (*Uma inornata*) as well as other taxa endemic to dune habitats in the Coachella Valley. Habitat destruction in the Valley began with the introduction of agriculture over a century ago. More recently, urban development has become the prime cause of habitat destruction through direct conversion (grading, paving, plowing); secondary impacts related to increased human activity (ORV use, introduction of alien plants, trampling); and through interference with the windblown sand transport system (TNC 1985). Without new sand, the dune systems in the Valley, and the endemic flora and fauna that depend on them, will not be maintained over a long period of time. Urban development in the Coachella Valley has already extirpated several occurrences of the milk-vetch, and several proposals for new development, including a golf course, are pending (Art Davenport, USFWS biologist, Laguna Niguel Office, pers. comm., 1991).

Shining milk-vetch (*Astragalus lentiginosus* var. *micans*) is restricted to two dune systems in the Eureka Valley. One dune system (Saline Sand Spur) is fairly inaccessible to human activity. The main dune system (Eureka Dunes) was a popular off-road vehicle recreational area until it was officially closed by the Bureau in 1979. Such off-road vehicle activity not only directly impacts the plants through crushing, but disturbance of the soil surface favors the establishment of plants more tolerant of such disturbance and would change the composition of the plant community over time.

Fish Slough milk-vetch (*Astragalus lentiginosus* var. *piscinensis*) is currently restricted to a 10-mile length of alkaline flats paralleling Fish Slough on lands owned and managed by the DWP and the Bureau. The Bureau established an ACEC on these lands in 1984 to protect the federally endangered Owens pupfish (*Cyprinodon radiosus*) as well as the entire wetland ecosystem. The ACEC is jointly managed by the Bureau, the Service, CDFG, University of California Natural Reserve System (NRS), and DWP. The DWP owns the Slough itself, as well as adjacent habitat for Fish Slough milk-vetch. The California Department of Fish and Game leases a pond site from DWP as a pupfish sanctuary. Because of the availability of water and the developement of wetland vegetation at Fish Slough, the area has sustained extensive human-related uses, beginning with cattle grazing in the 1860's. Ferren (1991b) has summarized impacts to botanical resources at Fish Slough, noting that those related to the developement of fisheries (construction of ponds, impoundments, roads, and ditches) have been the most deleterious. Other activities that are altering and fragmenting the habitat for Fish Slough milk-vetch include off-road vehicle activity, discing for agricultural purposes, and livestock grazing. Chemical treatment of water sources for fish control purposes, and groundwater pumping in adjacent Chalfant Valley may also be affecting the hydrologic conditions of Fish Slough habitat (Pinter and Keller 1991, Ferren 1991b).

Grazing by lifestock alters the composition of the plant community over time by reducing or eliminating those species that cannot tolerate trampling and by enabling those that can to increase in abundance. Other taxa that were not previously part of the native plant community may be introduced and flourish under the disturbance caused by grazing and may reduce or eliminate native taxa through competition for resources.

Sodaville milk-vetch (*Astragalus lentiginosus* var. *sesquimetralis*) is also subject to habitat alteration and disturbance due to grazing. One population, in Inyo County, is on Federal lands managed by the Bureau. In 1982, the Bureau designated 450 acres surrounding Big Sand Spring as an ACEC, primarily to protect the Owens tui chub (*Gila bicolor snyderi*) and Owens pupfish and in part to protect Sodaville milk-vetch. However, the Spring is also within a Herd Management Area for feral burros, as well as within a cattle grazing allotment. Prior to construction of an exclosure around Big Sand Spring in 1985, grazing by feral burros had substantially reduced the extent of Sodaville milk-vetch. Within three years of erecting the exclosure, the number of individuals increased from several hundred to possibly a thousand milk-vetch (Rutherford, pers, obs, 1988). However, occasional trespass by burros has not been entirely eliminated, and the limited distribution of the Sodaville milk-vetch makes it vulnerable to continued disturbance. A second population in Mineral County, Nevada, comprises approximately 500 individuals and is located entirely on private land. The third population, also in Mineral County, comprises less than several hundred individuals and occurs primarily on parcel of private land surrounded by Bureau lands. The parcel is located near a highway junction with developing roadside services and is subject to trampling and off-road vehicle activity.

Peirson's milk-vetch is currently known only from the Algodones Dunes. Less than 20 percent of the dune system is within a Bureau-designated Wilderness Study Area, on the northern tip of the dunes. The remaining 80 percent to the south is within one of the larges off-road vehicle recreation areas in the southwest (Bury and Luckenbach 1983). Bury and Luckenbach examined the ecological impacts of ORV use on the biota of the dunes in 1977 and 1979. Their studies clearly indicated that a reduced number of individuals, number of species, cover, and volume of plant biomass was found in impacted plots as compared to undistributed plots (Bury and Luckenbach 1983). In a recent monitoring report of Peirson's milk-vetch and three other taxa endemic to the Algodones Dunes (Ecos 1990), the authors note that the stems of Peirson's milk-vetch, already brittled by the drought, were easily smapped off by passing ORV's. They also note that, though appearing dry on the surface, dune soils retain soil moisture; this moisture may be more easily dissipated once the surface of the dune has been distributed by ORV's.

Habitat for triple-ribbed milk-vetch (*Astragalus tricarinatus*) is also subject to ORV disturbance. Even though the plant has not been sighted for several years, at least two of the four historical locations are subject to such disturbance.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Some taxa have become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing proposal. All seven taxa included in this rule occur on or near trails or roads and have the

potential of being collected or trampled. The small number of populations of all seven taxa could be extirpated with even a modest collection effort. The extremely limited number of Lane Mountain milk-vetch, and of triple-ribbed milk-vetch should plants reappear in future years from its seed bank, make them highly vulnerable to scientific collectors.

C. Disease or Predation

Disease is not known to be a factor for any of the taxa. As discussed under "Factor A," two taxa, Fish Slough milk-vetch and Sodaville milk-vetch, are subject to grazing from lifestock. The Fish Slough area has been grazed by cattle since the 1860's. Allotments currently exist both on DWP and Bureau lands, but grazing on Bureau lands apparently is confined to upland areas well outside of habitat for Fish slough milk-vetch. A 1 acre exclosure was constructed at a spring on Bureau lands in the early 1980's; recent observations indicate that Fish Slough milk-vetch has increased in numbers within the exclosure. An 80-acre exclosure was constructed by DWP in 1991. However, these exclosures encompass less than 5 percent of the habitat for Fish Slough milk-vetch.

Ferren (1991a) observed milk-vetch that had been virtually stripped of leaves, flowers, and seeds adjacent to rabbit pellets, thereby implicating predation by rabbits in reducing the reproductive potential of Fish Slough milk-vetch.

The Big Sand Springs site for Sodaville milk-vetch ocurs within an area designated as a Herd Management Area for feral burros as well as within a grazing allotment. Grazing by burros reduced the population of Sodaville milk-vetch to less than 500 individuals before an exclosure was constructed in 1985. While the size of the population has began to increase over the past 5 years, the spring provides the only source of water to both cattle and burros in the area, and grazing under trespass continues to be a threat.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (chapter 1.5 section 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (chapter 1.5 section 2050 *et seq.*), the California Fish and Game Commission has listed Peirson's milk-vetch and Sodaville milk-vetch as enangered. Though both statutes prohibit the "take" of State-listed plants (chapter 1.5 section 1908 and section 2080), State law appears to exempt the taking of such plants via habitat modification or land use change by the landowner. After the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the landowner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (chapter 1.5 section 1913).

The southern range of Peirson's milk-vetch follows the Algodones Dunes into northeastern Baja California. The country of Mexico has laws that presumably provide protection to rare plants; however, enforcement of those laws is lacking (Joe Quiroz, TNC, Phoenix, Arizona, pers. comm., 1991).

E. Other Natural or Human-caused Factors Affecting Its Continued Existence

At least three, and possibly all, of the milk-vetch are threatened with stochastic extinction by virtue of the limited number of individuals and/or range of the existing populations. Genetic viability is reduced in small populations, making them vulnerable to extinction by a single human-caused or natural event. The potential for extirpation owing to small population size can be exacerbated by natural causes such as the recent drought. For instance, surveys performed in 1991 detected only six individuals of Lane Mountain milk-vetch (Rutherford and Bransfield 1991, Bransfield 1991). The population size is undoubtedly higher, because the plant's cryptic habit of scrambling up through other desert shrubs makes it difficult to detect. Nevertheless, such low survey results were, at least in part, a result of the recent drought.

Two other taxa are currently at precipitously low population sizes. No individuals of triple-ribbed milk-vetch have been seen since 1987 (K. Barrows, botanical consultant, pers. comm., 1991). A 1990 survey for Peirson's milk-vetch resulted in detection of a small population size at the Algodones Dunes (Ecos 1990). While complete surveys have not been done within the past several years, it is likely that the other taxa of dry-site habitats (shining milk-vetch and Coachella Valley milk-vetch) have also experienced drought-related declines in population size. Even those taxa occurring in habitats with moister soil conditions (Fish Slough milk-vetch and Sodaville milk-vetch) may be affected by recent drought conditions due to lowered groundwater tables.

Shining milk-vetch is threatened by competition from an alien plant, Russian thistle (*Salsola iberica*), at the base of the Eureka Dunes. Prior to 1979, the dunes were a popular off-road vehicle area. Russian thistle was probably introduced to the area either by such activity or by an historical cattle grazing operation that no longer exists. Past off-road vehicle activity may have exacerbated the invasion of Russian thistle by altering the sandy soils in a manner that facilitated the spread of the thistle. The seeds of Russian thistle include a pre-differentiated spiral-shaped taproot that enables the plant to establish rooting immediately upon germination (TNC 1986). This unique seed structure, coupled with Russian thistle's prolific seed production, allow it to quickly take over disturbed sites. While Russian thistle is also autotoxic after reaching certain densities, and may even decline in unfavorable climatic years, it probably will never completely be removed from the area.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to propose *Astragalus jaegerianus*, *Astragalus lentiginosus* var. *coachellae*, *Astragalus lentiginosus* var. *piscinensis*, *Astragalus magdalenae* var. *peirsonii*, and *Astragalus tricarinatus* as endangered; and *Astragalus lentiginosus* var. *micans* and *Astrigalus lentiginosus* var. *sesquimetralis* as threatened. Threats to the seven taxa include the following: Habitat alteration and destruction resulting from construction, urban development, off-road vehicle activity, and military training exercises; habitat degradation and predation by feral burros, livestock, and rabbits; competition from alien plants, and the potential for overcollection. The limited distributions of these taxa and their small population size makes them particularly vulnerable to extinction from stochastic events.

Because *Astragalus jaegerianus*, *Astragalus lentiginosus* var. *coachellae*, *Astragalus lentiginosus* var. *piscinensis*, *Astragalus magdalenae* var. *peirsonii*, and *Astragalus tricarinatus* are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. The Service has determined that threatened status rather than endangered status is appropriate for *Astragalus lentiginosus var. micans* and *A. lentiginosus* var. *sesquimetralis*, primarily because some measures have been initiated by the Bureau to protect these species. Management activities by the Bureau, including signing, fencing, and increasing ranger patrols, have somewhat reduced the potential for

habitat destruction by off-road vehicle activity at Eureka Dunes where *A. lentiginosus* var. *micans* occurs. However, the plant's habitat still remains vulnerable to such activity through trespass, and competition with Russian thistle remains a threat to the plant. The Bureau has taken steps to reduce the degradation of habitat resulting from burro and cattle grazing by construction of an exclosure around the Big Sand Spring site, where *Astragalus lentiginosus* var. *Sesquimetralis* occurs. However, the plant's habitat still remains vulnerable to such grazing activity through trespass at this site, and the plant is still vulnerable to threats from commercial development, trampling, and off-road vehicle activity. The two sites in Nevada are currently unprotected. Because these two species appear to be likely to become in danger of extinction within the foreseeable future, they fit the definition of threatened as defined in the Act. Criticial habitat is not being proposed for these taxa for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the species. The publication of critical habitat descriptions and maps required in a proposal for critical habitat would increase the degree of threat to these plants from possible take or vandalism, and, therefore, could contribute to their decline and increase enforcement problems. The listing of species as either endangered or threatened publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All Federal Agencies involved and local planning agencies have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time; such designation likely would increase the degree of threat from vandalism, collecting, or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following a listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 40 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All seven taxa occur wholly or primarily on Federal lands managed by the Bureau. Five of the taxa are within areas designated as ACEC's, at least two are in or adjacent to grazing allotments, one is within a feral burro herd management area, and one is within a wind energy development corridor. Bureau activities that could potentially affect these taxa and their habitats include specific management activities undertaken through ACEC management plans, including ORV recreational activity at the Algodones Dunes; renewal of grazing permits; burro herd management activities; and the permitting of wind energy development and associated rights-of-way in the Coachella Valley. All of the known habitat for *Astragalus jaegerianus* is on Federal lands managed by the Bureau and by the NTC at Fort Irwin. The NTC is proposing to acquire Bureau lands that include all of the remaining habitat for the plant for use as a military training area. Activities on BIA lands that could potentially affect *Astragalus lentiginosus* var. *coachellae* include agricultural or commercial development; specific actions have not been identified at this time.

The Act and its implementing regulations found at 50 CFR 17.61. 17.62, and 17.63 for endangered plants, and at 50 CFR 17.71 and 17.72 for threatened plants set forth a series of general prohibitions and exceptions that apply to all threatened or endangered plants. With respect to the five plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale this species in interstate or foreign commerce; remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such endangered plant species on any other area in knowing violation for any State law or regulation or in the course of any violation of a State criminal trespass law.

The shining milk-vetch and the Sodaville milk-vetch, proposed to be listed as threatened, would be subject to similar prohibitions (16 U.S.C. 1538(a)(2)(E); 50 CFR 17.61, 17.71). Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room

432, Arlington Virginia 22203–3507 (703/358–2093 or FTS 921–2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Office Supervisor of the Ventura Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Ventura Field Office (see ADDRESSES section).

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, suite 100, Ventura, California 93003 (805/644–1766 or FTS 983–6040).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) for plants by adding the following, in alphabetical order under the plant family indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Fabaceae—Pea family:						
*	*	*	*	*	*	
Astragalus jaegerianus	Lane Mountain milk-vetch	U.S.A. (CA)	E		NA	NA.
*	*	*	*	*	*	
Astragalus lentiginosus var. *coachellae.*	Coachella Valley milk-vetch	U.S.A. (CA)	E		NA	NA.
*	*	*	*	*	*	
Astragalus lentiginosus var. *micans.*	Shining milk-vetch	U.S.A. (CA)	T		NA	NA.
*	*	*	*	*	*	
Astragalus lentiginosus var. *piscinensis.*	Fish Slough milk-vetch	U.S.A. (CA)	E		NA	NA.
*	*	*	*	*	*	
Astragalus lentiginosus var. *sesquimetralis.*	Sodaville milk-vetch	U.S.A. (CA, NV)	T		NA	NA.
*	*	*	*	*	*	
Astragalus magdalenae var. *peirsonii.*	Peirson's milk-vetch	U.S.A. (CA); Mexico	E		NA	NA.
*	*	*	*	*	*	
Astragalus tricarinatus	Triple-ribbed milk-vetch	U.S.A. (CA)	E		NA	NA.
*	*	*	*	*	*	

Dated: April 22, 1992.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-10708 Filed 5-7-92; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018-AB75

Endangered and Threatened Wildlife and Plants; Proposed Rule to List Spectacled Eider as Threatened and Notice of 12-Month Finding for a Petition to List Two Alaskan Eiders as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to add two eider species that nest and winter in Alaska and Siberia to the list of Endangered and Threatened Wildlife. After a review of available scientific and commercial information on these species, the Service finds that the petition to list the spectacled eider (*Somateria fischeri*) is warranted. The Service is proposing to list the spectacled eider as threatened pursuant to the Endangered Species Act of 1973, as amended. Critical habitat is not currently being proposed. The Service finds that the petition to list the Steller's eider (*Polysticta stelleri*) is warranted but the listing action is precluded by listing actions of higher priority. The Service seeks data and comments from the public on this proposed rule.

DATES: The finding announced in this notice was made on February 12, 1992. Comments from all interested parties relating to this proposal must be received by September 8, 1992. Public hearing requests relating to the proposed rule must be received by June 22, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Anchorage Field Office, U.S. Fish and Wildlife Service, 605 West 4th Avenue, room G-62, Anchorage, Alaska, 99501. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David E. McGillivary, Field Supervisor (see ADDRESSES above) (907/271-2888 or FTS 868-2888).

SUPPLEMENTARY INFORMATION:

Petition Process Background

On December 10, 1990, the Service received a petition from Mr. James G. King of Juneau, Alaska, dated December 1, 1990, to list the Steller's eider and spectacled eider as endangered species and to designate critical habitat for these species on the Yukon Delta National Wildlife Refuge and the National Petroleum Reserve in Alaska. Section 4(b)(3)(A) of the Act requires that, to the maximum extent practicable, within 90 days of receipt of a petition to list, delist, or reclassify a species, the Service determine whether or not substantial information has been presented indicating that the requested action may be warranted. The 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was published in the **Federal Register** on April 25, 1991 (56 FR 19073).

The 1-year status review for Steller's and spectacled eiders has now been completed. Information sources for the review include published and unpublished studies and reports, file data, letters, and personal contact with agencies, organizations, and individuals that have knowledge of eiders or their habitats. This proposed rule to list the spectacled eider as a threatened species constitutes the final 12-month finding that the petitioned action is warranted in accordance with section 4(b)(3)(B) of the Act. For the Steller's eider, the Service has determined that listing is warranted but precluded by listing actions for higher priority species.

Steller's Eider

The breeding range of Steller's eiders formerly extended discontinuously from the eastern Aleutian Islands around the west and northern coasts of Alaska to the Yukon border, and along the arctic coast of Siberia from the Chukotski Peninsula west to the Kheta River (Murie 1959, American Ornithologist's Union [AOU] 1983, Kertell 1991). In Alaska, they now breed exclusively on the western North Slope. Most of the world's Steller's eiders winter along the Alaska Peninsula from the eastern Aleutian Islands to Kodiak Island, with far lesser numbers wintering in the Commander Islands of Russia and in Norway (Kertell 1991).

Survey data from the Alaska Peninsula show that the worldwide population of Steller's eiders may have declined by 50 to 75 percent in the last 25 years. Steller's eiders apparently no longer nest on the Yukon-Kuskokwim Delta and elsewhere in western Alaska. The Service currently estimates that between 70,000 and 100,000 Steller's eiders return from Alaskan wintering grounds to nest in Siberia while approximately 2,000 continue to nest in northern Alaska. Causes for the reduction in Alaskan breeding range and apparent decline in worldwide population are not known.

Based on this information, the Service has determined that the listing priority for Steller's eider is lower than other species that have been identified for listing actions in the immediate future. Present information does not indicate that the Steller's eider is in any immediate danger of becoming endangered, as defined under the Act. Therefore, listing action for this species is precluded by work on higher priority species. The Steller's eider is elevated to Category-1 status on the candidate species list and studies are underway to further document and monitor its status.

Spectacled Eider

The spectacled, or Fisher's, eider (also known as Quageq in Yupik and Quvaasuk in Inupiat) is a large-bodied diving duck and one of three eiders in the genus *Somateria*. It was first described by Brandt in 1847 as *Fuligula fischeri*, then later placed in the genuses *Lampronetta* and *Arctonetta*, and finally under *Somateria* (AOU 1983). The adult male has a green head with a long, sloping "eider-like" forehead and a large, distinctive white eye patch, and a black chest and white back. Females are brown with a less distinct spectacle eye patch. They breed discontinuously along the arctic coast of Alaska from the Nushagak Peninsula north to Barrow and then east nearly to the Yukon border (Christian P. Dau, U.S. Fish and Wildlife Service, Cold Bay, Alaska, pers. comm., 1991, North 1990), and along the Arctic coast of Siberia from the Chukotski Peninsula west to the Yana Delta (AOU 1983). Only a few spectacled eiders have been documented in the winter in coastal Alaska and British Columbia. Their primary winter range is unknown but presumed to be the central and northwestern Bering Sea (Dau and Kistchinski 1977).

Spectacled eiders are marine ducks that have not been studied away from their breeding grounds. Dau and Kistchinski (1977) suggest that they feed primarily on benthic mollusks and crustaceans in shallow waters (< 30 meters). Kessel (1989) hypothesized that they may also forage on pelagic or free-floating amphipods that are concentrated along the sea water-pack ice interface, regardless of water depth. On their coastal breeding grounds these eiders feed on freshwater mollusks,

insects, plants, and other foods (Dau 1974). Their nests are built on shorelines, islands, and meadows in lowland, coastal tundra; predominately within 15 kilometers of the coast on the Yukon-Kuskokwim Delta (Dau 1974, Dau and Kistchinski 1977).

Dau and Kistchinski (1977) provide the only rangewide estimates for spectacled eider numbers, based principally on study sites on the Yukon-Kuskokwim Delta, Alaska and Indigirka Delta, Siberia. They estimate that 47,700 pairs nested on the Yukon-Kuskokwim Delta in average years before 1972, plus another 3,000 pairs elsewhere in Alaska and 30,000–40,000 pairs in Siberia. The Service presently estimates that 2,700 pairs nest on the Yukon-Kuskokwim Delta (Robert Stehn, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991 [revision from 2,400 pairs cited in Stehn 1991]) and between 300 and a few thousand pairs nest on Alaska's North Slope (data on file at the Migratory Bird Management Office, Fairbanks, Alaska and this finding). No recent population estimates are available for Siberia.

A Yukon-Kuskokwim population of 2,700 pairs represents a 94 percent decline from 47,700 pairs in the early 1970s, although the original population estimate may be high due to overestimating the geographic extent of high breeding densities (Christian P. Dau, pers. comm., 1991). Further evidence that the decline in spectacled eiders on their primary breeding range is substantial and unabated comes from aerial waterfowl surveys and nest plot studies.

Since 1957, the number of eiders observed on standardized waterfowl breeding pair surveys flown in western Alaska has decreased by 87 percent, from approximately 65,000 to less than 9,000 adult birds (based on five-year averages) (Conant and Dau 1991, data on file at the Migratory Bird Management Office, Juneau, Alaska). This figure includes Steller's and common eiders (*S. mollissima*); however, spectacled eiders are and were historically the most abundant and widely distributed eider in this region. Based on random plots sampled on the central Yukon-Kuskokwim coast (2,264 km^2) from 1988 to 1991, the average rate of decline in nest densities is 19 percent per year (Stehn 1991). This trend data is corroborated by a 14 percent per year decline since 1988 in the density of spectacled and common eiders observed on the intensified Yukon-Kuskokwim aerial survey (data on file at the Migratory Bird Management Office, Anchorage, Alaska; analysis by William I. Butler, Jr., U.S. Fish and Wildlife Service, Anchorage, Alaska, 1991).

Far less data are available on nesting eiders elsewhere in Alaska. Spectacled eiders were never abundant on the Seward Peninsula, where they are now rare breeders (Kessel 1989). The North Slope may have supported 3,000 pairs twenty years ago (Dau and Kistchinski 1977), although this estimate was based on little data (Christian P. Dau, pers. comm., 1991). Spectacled eiders are rarely detected on the North Slope coastal plain breeding pair surveys (data on file at the Migratory Bird Management Office, Fairbanks, Alaska). The 1991 survey showed a total of only 342 breeding pairs. Alternately, if densities observed at Prudhoe Bay in 1991 are typical of the coastal strip west to Barrow (Declan Troy, Troy Ecological Research Associates, Anchorage, Alaska, pers. comm., 1991, North 1990), then a few thousand pairs may be nesting on the North Slope.

Spectacled eider populations are not surveyed in Siberia, and no recent information is available on their status in Siberia (Pavel Tomkovich, Zoological Museum of Moscow University, *in litt.*, 1991). Dement'ev *et al.* (1967) reported that numbers were dwindling on the Indigirka Delta, the center of Siberian breeding range (Dau and Kistchinski 1977), but no recent studies have been conducted in that region. Spectacled eiders have not been nominated for the Red Data Book of Russia or regional rare species lists (Pavel Tomkovich, *in litt.*, 1991).

Summary of Factors Affecting the Species

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The destruction or modification of terrestrial habitat is not known to be a factor in the decline of the spectacled eider. Nesting habitat encompasses vast expanses of coastal tundra that remain predominantly unaltered. Marine habitat requirements of the spectacled eider are unknown.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Spectacled eiders have apparently been taken in low numbers for subsistence and minimally for sport use in recent years, but rangewide and local effects of this harvest are not documented. The current estimated subsistence harvest in Alaska is about 570 spectacled eiders per year, but numerous villages in eider migration and nesting range are not surveyed (Braund *et al.* 1989, data on file at the Migratory Bird Management Office, Anchorage, Alaska, John Piatt, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). While historic harvest data are unavailable, it is unlikely that traditional subsistence harvest had a significant effect on historically large populations. At the current population level, however, even low harvest levels may now be contributing to the population decline in combination with reduced reproductive success or increased mortality due to other factors.

Eiders have traditionally been harvested during migration, and birds and eggs have been taken on some nesting grounds for subsistence use by Alaska and Siberia Natives. Historically, eider skins and feathers were used for clothing and bones were used for household purposes (Klein 1966, Johnson 1971). Feathers have been applied to ceremonial fans and masks that are sold to tourists (Klein 1966).

Sport harvest of spectacled eiders in the United States has been limited primarily to a few taken annually by collectors on St. Lawrence Island until the U.S. sport hunting season was closed in 1991 (Robin West, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Some illegal harvest for the taxidermy trade has also been reported from Gambell, St. Lawrence Island, but the magnitude of take is unknown (Stephen A. Tuttle, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Information on harvest in Russia is lacking.

C. Disease or Predation

Eider eggs, young, and occasionally adults are preyed upon by mammalian and avian predators, particularly arctic fox (*Alopex lagopus*), glaucous gulls (*Larus hyperboreus*), and parasitic jaegers (*Stercorarius parasiticus*). Rangewide or long-term effects of predation on spectacled eider populations have not been documented.

Historically, eiders may have nested in association with black brant (*Brant bernicla*) and cackling Canada geese (*B. canadensis minima*) as a strategy to reduce predation losses (Kertell 1991). When brant and cacklers declined sharply during the past few decades in Alaska, fox predation on eider eggs may have increased (Kertell 1991). Arctic foxes decimated numerically small, remnant brant colonies on the Yukon-Kuskokwim Delta in recent years (Raveling 1989), and they also could have impacted eider populations. Populations of large gulls (primarily glaucous-winged gulls [*L. glaucescens*]

but also glaucous gulls) have apparently increased markedly in southwestern Alaska due to increased food availability, particularly fish processing wastes (Robert Gill, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Hence, gull predation on eggs or young eiders may have risen as well.

D. The Inadequacy of Existing Regulatory Mechanisms

Harvest of eiders is regulated under authority of the Migratory Bird Treaty Act (16 U.S.C. 703–711). The U.S. sport hunting season on spectacled eiders was closed in 1991, while the estimated subsistence harvest is about 570 birds per year or more. No recent information is available on harvest in Russia. The State of Alaska recently initiated a non-game wildlife program, but the spectacled eider has not yet received any attention from State agencies.

Spring and summer subsistence hunting of eiders in Alaska is in violation of the Migratory Bird Treaty Act, which prohibits hunting for most migratory birds between March 10 and September 1. The Service recognizes however, that residents of certain rural areas in Alaska depend on waterfowl as a customary and traditional source of food. Due to this long established dependence, the Service generally has exercised its discretion to not strictly enforce the closed season with respect to some birds, provided that the birds are taken in a non-wasteful manner and are used for food. The United States is presently working with the Canadian government and interested groups on development of an agreement to amend the 1916 Migratory Bird Treaty with Canada to allow for regulated spring subsistence harvest of waterfowl in some remote northern locations. The Service is also reviewing appropriate harvest management strategies in accord with existing policies and regulations.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The petition to list the spectacle eider as an endangered species cited oil spills, pollution resulting from offshore oil development and fishery vessels, the effects of large scale fishery fleets on marine ecology, and direct mortality in fishing nets, as potential factors affecting the spectacled eider. At present, no evidence is available demonstrating that these factors have had a direct effect on spectacled eiders in the North Pacific or Arctic Oceans. Direct mortality in fishing nets or from oil spills has not been documented by the Service. However, food supplies or other critical elements of the marine ecosystem may have been diminished by fishing activity, contamination, competition with other species, or disruption of the benthic environment.

Hazardous materials are spilled regularly into the Bering Sea from shipwrecks and bilge discharges and some of these materials may enter benthic or pelagic food chains (Everett Robinson-Wilson, U.S. Fish and Wildlife Service, Anchorage, Alaska, pers. comm., 1991). Current and future oil and gas exploration, and potential development, in State and other continental shelf waters could impact eiders due to disturbance and oil spills. Potential production of oil from leases in the outer continental shelf of the Bering, Beaufort, and Chukchi Seas will substantially increase the probability of oil spills from platforms, pipelines, and tankers (U.S. Minerals Management Service 1991), with potential effects on spectacled eiders. The anticipated increase in general shipping activity in pack ice lead systems may put eiders at risk of oil spills damages during critical migration, wintering, and molting periods, when they are highly concentrated or in flightless flocks. Currently, splectacled eider nesting habitat on the North Slope is largely within the National Petroleum Reserve in Alaska, an area of little oil and gas activity.

Severe weather is also a threat to arctic sea ducks, and major eider die-offs have been recorded after late spring storms on the Arctic Ocean (Myres 1958, Barry 1968). While historically large populations would not be seriously affected by periodic die-offs or by nesting failures due to coastal flood surges (Dau 1974), remnant or isolated populations are susceptible to devastation from these periodic events.

In summary, approximately 2,700 pairs of spectacled eiders nested on their historically important breeding range on the Yukon-Kuskokwim Delta in 1991, where an estimated 48,000–70,000 pairs nested twenty year ago. This 94 percent decline is corroborated by the 87 percent decline in the number of eides seen on breeding pair surveys in southwestern Alaska since 1957 and the 14–19 percent per year declines in nest and breeding pair densities observed in studies on the Yukon Delta National Wildlife Refuge since 1986.

Although the factors that caused this decline are unknown, a number of potential, contributory factors have been identified. These, or other still unidentified threats, in some combination, have increased mortality beyond the reproductive rate of this species to replace the additive losses. If the downward trend in nest densities on the Yukon-Kuskokwim Delta continues unabated, this breeding segment will be reduced to 50 percent of current size every 3.3 years (Stehn 1991). No data are available to show whether similar trends have affected the Siberian breeding population where as many as 40,000 pairs traditionally nested.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining this rule. Based on this evaluation, the preferred action is to list the spectacled eider as a threatened species (i.e., a species that is likely to become endangered throughout all or a significant portion of its range in the foreseeable future).

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that the designation of critical habitat for the spectacled eider is not prudent at this time, because such a designation would not benefit the species (50 CFR 424.12). Loss or alteration of terrestrial habitat is not considered to be factor in the population decline of spectacled eiders. Extensive, unaltered breeding habitat is available for recovery of the species, including lands under Federal jurisdiction such as the Yukon Delta National Wildlife Refuge. Marine habitat requirements of the spectacled eider are unknown. Protection of spectacled eider habitat will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local governments and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the

prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402 (see revision at 51 CFR 19926, June 3, 1986). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Presently it is difficult to assess whether any existing or planned Federal involvement is likely to adversely affect this species, due principally to the lack of specific information on eider distribution. Spectacled eiders may be affected by proposed oil exploration activities in the outer continental shelf. If they are staging, molting, or wintering in these areas, consultation between the U.S. Minerals Management Service and the Service would be initiated. Also, eider nesting habitat on the North Slope is largely within the National Petroleum Reserve in Alaska, an area of mineral oil and gas activities. Critical habitat is not currently being proposed.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and state conservation agencies.

Section 10(e) of the Act exempts any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska, or any non-native permanent resident of an Alaskan Native village, from the aforementioned prohibitions on taking any endangered or threatened species, if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to Section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that provisions of this subsection shall not apply to any non-native resident of an Alaskan Native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

Regulations on subsistence harvest by any Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan Native village may be established pursuant to section 10(e)(4) of the Act if the Secretary determines that such taking materially and negatively affects the threatened or endangered species and holds hearings on the proposed harvest regulations in the affected judicial districts of Alaska. Subsistence harvest regulations promulgated pursuant to the Endangered Species Act would have to be in accordance with the Migratory Bird Treaty Act, which prohibits taking of eiders between March 10 and September 1. The Service is presently considering appropriate harvest management strategies in accord with existing policies and regulations.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The purpose of the long comment period (120 days) is to allow foreign scientists to be given due notice and time to respond. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of this Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species;

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Anchorage Field Office (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ecological Services Anchorage Field Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Jean Fitts Cochrane, Ecological Services Anchorage Field Office (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*	*	
Eider, spectacled (=Fisher's)	Somateria (=*Fuligula*, =*Lampronetta*, =*Arctonetta*) *fischeri*.	U.S.C. (AL); C.I.S.	Entire	T		NA	NA
*	*	*	*	*	*	*	

Dated: April 21, 1992.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 92–10712 Filed 5–7–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Proposal To Determine Endangered Status for Four Fairy Shrimp and the Vernal Pool Tadpole Shrimp in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act) for five animals: The vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Brancinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), California linderiella (*Linderiella* occidentalis), and the vernal pool tadpole schrimp (*Lepidurus packardi*). These five invertebrate species are restricted to vernal pools and swales in the State of California and are imperiled by habitat loss and modification. This proposal, if made final, would implement protection and recovery provisions provided by the Act for all of these animals. Critical habitat is not proposed. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 7, 1992. Public hearing requests must be received by June 22, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way Room E–1823, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chirstopher D. Nagano at the above address or by telephone (916/978–4866 or FTS 4760–4866).

SUPPLEMENTARY INFORMATION:

Background

The Conservancy fairy shrimp, longharn fairy shrimp, vernal pool fairy shrimp, and California linderiella are aquatic members of the Crustacean order Anostraca. The vernal pool tadpole shrimp is an acquatic member of the Crustacean order Nostraca. They are endemic to vernal pools and swales in the Central Valley, Coast Ranges, and a limited number of sites in the Transverse Range and Santa Rosa Plateau of California.

The four fairy shrimp and the vernal pool tadpole shrimp live in ephemeral freshwater habitats, such as vernal pools and swales. None are known to occur in running or marine waters or other permanent bodies of water. They are ecologically dependent on seasonal fluctuations in their habitat, such as absence or presence of water during specific times of the year, duration of water, and other environmental factors that include specific pH levels, salinity, temperature, and quantities of dissolved oxygen. Water chemistry is one of the most important factors in determining the distribution of fairy shrimp (Belk 1977). The five species proposed for listing herein have been found to be extremely sporadic in their distribution since they may inhabit only one or a few pools in otherwise more widespread vernal pool complexes (Larry Eng, California Department of Fish and Game, pers. comm., 1990).

Fairy shrimp have delicate elongate bodies, large stalked compound eyes, no carapace, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex beating movements of the legs that pass in a wave-like anterior to posterior direction. Nearly all fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of detritus (Pennak 1989). The second pair of antennae in the adult females are cylindrical and elongate, but in the males are greatly enlarged and specialized for clasping the females during copulation. The females carry the eggs in an oval or elongate ventral brood sac. The eggs are either dropped to the bottom or remain attached until the female dies and sinks. The thick-shelled "resting" or "winter" eggs are capable of withstanding high heat, cold, and prolonged dessication. The eggs hatch when the vernal pools and swales fill with rainwater. The early stages of the fairy shrimp develop rapidly into adults.

Tadpole shrimp have dorsal compound eyes, a large shield-like carapace that covers most of the body, and a pair of long cercopods at the end of the last abdominal segment (Pennak 1989; Linder 1952; Longhurst 1955; Lynch 1966, 1972). They are primarily benthic animals that swim with their legs down. Tapole shrimp climb or scramble over objects, as well as plow along or in bottom sediments. Food items consist of organic detritus and living organisms that they capture, such as fairy shrimp and other invertebrates (Pennak 1989; Fryer 1988). Mating in tadpole shrimp is described by Longhurst (1955). The females deposit their eggs on vegetation

and other objects on the pool bottom. The vernal pool tadpole shrimp passes the dry months in the egg stage. The eggs hatch as the vernal pools and swales are filled with rainwater in the fall and winter.

Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Holland and Jain 1977, 1988; Thorne 1984). Overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Downward percolation is prevented by the presence of an impervious subsurface layer, such as a clay bed, hardpan, or volcanic stratum (Holland 1976, 1988). In well developed vernal pools, temporary inundation makes pools too wet for nearby upland plant species during the wetted period, while rapid drying during late spring makes pool basins unsuitable for marsh or aquatic species that require a more permanent source of water. However, many indigenous plant and several aquatic invertebrate species have evolved to occupy the arduous environmental conditions found in vernal pool habitats. Fairy shrimp and tadpole shrimp play an important role in the community ecology of ephemeral water bodies (Loring *et al.* 1988). They are fed upon by waterfowl (Krapu 1974, Swanson *et al.* 1974) and other vertebrates, such as spadefoot toad (*Scaphious hammondi*) tadpoles (Marie Simovich, University of San Diego, pers. comm., 1991).

Vernal pools occur in several regions of California. Generally vernal pool habitat is found west of the Sierra Nevada and extends from southern Oregon into northern Baja California, Mexico (Holland and Jain 1977, 1988). The distribution of vernal pools is highly discontinuous and some of the aquatic invertebrates that are found in this habitat occur only in specific geographic areas.

Urban development, and water, flood control, highway, and utility projects, as well as conversion of wildlands to agricultural use, endanger vernal pools in southern California (Riverside and San Diego Counties), the Central Valley, and San Francisco Bay area (Jones and Stokes Associates 1987). Changes in hydrologic pattern, grazing, and off-road vehicle use also endanger these sites and the five species proposed for listing herein. There were an estimated six million acres of vernal pools in the Central Valley at the time Europeans arrived in California (Holland 1978). By 1970, Holland (1978, 1988) estimated that 90 percent of this amount was destroyed largely by human activities. Vernal pools in southern California have been highly impacted by human activities (Zedler 1987). The rate of loss of vernal pool habitat in California continues at approximately 2 or 3 percent per year (Holland 1988).

A Discussion of the Five Species

The Conservancy fairy shrimp (*Branchinecta conservatio*), in the family Branchinectidae, was described by Larry Eng *et al.* in 1990, from specimens collected at the Jepson Prairie Preserve, which is located in the Central Valley east of Travis Air Force Base in Solano County (Eng *et al.* 1990). The animal ranges in size from 14 to 27 millimeters (0.6 to 1.1 inches) long. This species is most similar in appearance to *B. lindahli* (Lindahl's fairy shrimp). However, the female brood pouch is fusiform and usually ends under abdominal segment 8 in *B. conservatio*, where it is cylindrical and usually ends under segment 4 in *B. lindahli*. The large, oval pulvillus at the proximal end of the basal segment of the male antennae appears similar in both species; however, the terminal end of the distal segments are distinctive (Eng *et al.* 1990).

The Conservancy fairy shrimp inhabits highly turbid, ephemeral water located in swales and vernal pools. The species is known from four disjunct localities: seven pools in the Vina Plains north of Chico in Tehema County; three pools on the Jepson Prairie in Solano County; one pool near Haystack Mountain northeast of Merced in Merced County (Eng *et al.* in 1990); and one pool in the Lockewood Valley of northern Ventura County (Michael Fugate, University of California at Riverside, pers. comm., 1991). The pools inhabited by the Conservancy fairy shrimp are large, such as the 36 hectare (89 acre). Olcott Lake at Jepson Prairie (Eng., pers. comm., 1990). The Conservancy fairy shrimp has been observed from November to early April. The pools at Jepson Prairie and Vina Plains inhabited by this animal have a neutral pH, and very low conductivity, total dissolved solids (TDS), and alkalinity (Barclay and Knight 1984; Eng *et al.* 1990).

The longhorn fairy shrimp (*Branchinecta longiantenna*), family Branchinectidae, was described by Larry Eng *et al.* in 1990 from specimens collected at Souza Ranch in the Kellogg Creek watershed, about 35 kilometers (22 miles) southeast of the City of Concord in Contra Costa County, California (Eng *et al.* 1990). It ranges in size from 12.1 to 20.8 mm (0.5 to 0.8 in). This species differs from other branchinectids because the portion of the distal segment of its antennae is flattened in the anterod-posterior plane rather than the latero-medial plane. The species inhabits ephemeral water that is located in clear to turbid grass-bottomed pools in unplowed grasslands and also clear-water pools in sandstone depressions. This species is known only from three disjunct localities along the eastern margin of the central Coastal Range from Concord, Contra Costa County, south to Soda Lake in San Luis Obispo County: 4 pools in the Kellogg Creek watershed; 1 pool at the Atlamount Pass area; and 13 pools around the western and northern boundaries of Soda Lake on the Carrizo Plain (Eng *et al.* 1990). All pools inhabited by this species are filled by winter and spring rains and may last until June. The longhorn fairy shrimp has been observed from late December until late April. The water in grassland pools inhabited by this species has a neutral pH, and very low conductivity, TDS, and alkalinity (Eng *et al.* 1990).

The vernal pool fairly shrimp (*Branchinecta lynchi*), family Branchinectidae, was described by Larry Eng *et al.*, 1990, from specimens collected at Souza Ranch in the Kellogg Creek watershed, Contra Costa County, California (Eng *et al.* 1990). The common name "vernal pool fairy shrimp" is utilized by the Service instead of the "vernal pool branchinecta" that was originally given to this species in Eng *et al.* (1990). "Fairy shrimp" is a widely recognized common name for other members of the genus *Branchinecta*. The vernal pool fairy shrimp ranges in size from 10.9 to 25.0 mm (0.4 to 1.0 in). This species most resembles *B. coloradensis* (Colorado fairy shrimp). There are several differences in the antennae of the males of the two species including the basal segment outgrowth below and posterior to the pulvillus which is ridge-like in *B. lynchi*, whereas it is cylindrical and often much larger in *B. coloradensis*. The shorter brood pouch of *B. lynchi* is pyriform while the larger one in *B. coloradensis* is fusiform (Eng *et al.* 1990).

The vernal pool fairy shrimp inhabits ephemeral pools with clear to tea-colored water. This species has been most commonly observed in grass or mud bottomed swales, earth sump, or basalt flow depression pools in unplowed grasslands. The vernal pool fairy shrimp has been collected from early December to early May. The water in pools inhabited by this species has a pH averaging 7.0; and low TDS, conductivity, alkalinity, and chloride (Collie and Lathrop 1976). The vernal

pool fairy shrimp is found at 30 vernal pools and swales from the Vina Plains in Tehama County through most of the length of the Central Valley, and south along the central Coast Range to the mountain grassland of northern Santa Barbara County (Eng *et al.* 1990; Mike Fugate, pers, comm., 1991). Several disjunct populations also occur on the Santa Rosa Plateau and near Rancho California in Riverside County. Although the vernal pool fairy shrimp is found at a number of sites, it is not abundant at any of them. It often occurs with other fairy shrimp species, but is never the numerically dominant one (Eng *et al.* 1990).

The California linderiella (*Linderiella occidentalis*), family Linderiellidae, was described by G.S. Dodds in 1923, from specimens collected at Stanford University in Santa Clara County, California (Eng *et al.* 1990). This is the only member of the fairy shrimp family Linderiellidae in North America (Pennak 1989). *Linderiella occidentalis* has horn-like, conical shaped antennal appendages with short median spines. The frontal appendage is absent or not longer than Antenna II (Belk 1975).

The California linderiella inhabits ephemeral pools containing clear to tea-colored water. These pools are most commonly located in grass bottomed swales of unplowed grasslands in old alluvial soils underlain by hardpan, or in clear-water pools formed in sandstone depressions. Some specimens have been observed in mud-bottomed pools containing lightly turbid water. All pools known to be inhabited by this species are filled by winter and spring rains and may last until June. The pools vary in size from 1 square meter (10.8 square feet) to the 40-hectare (99-acre) Boggs Lake in Lake County. The California linderiella has been observed from late October to early May. The water in pools inhabited by this species has very low alkalinity, conductivity, and TDS (Eng *et al.* 1990). The California linderiella is found at 40 vernal pools and swales in the Central Valley from east of Red Bluff in Tehama County to east of Madera in Madera County and across the valley in the Sacramento area to the central and south coast mountains from Boggs Lake in Lake County south to Riverside County (Eng *et al.* 1990; Mike Fugate, pers. comm., 1991).

The vernal pool tadpole shrimp (*Lepidurus packardi*) is a member of the family Triopsidae and was described by Eugene Simon in 1866 (Longhurst 1955). Longhurst (1955) placed the name in synonomy with *Lepiduras apus*. Susequently, Lynch (1972) examined the taxa and determined that *Lepiduras packardi* is a valid species. The Service accepts Lynch's taxonomic treatment of the genus *Lepiduras*, thus maintaining the integrity of *L. packardi*.

Vernal pool tadpole shrimp adults reach a length of 50 mm (2 in). They have about 35 pairs of legs, two long cercopods, and a flat, paddle-shaped supra-anal plate. The animal inhabits vernal pools and swales containing clear to highly turbid water. The vernal pool tadpole shrimp is found at 14 vernal pool complexes in the Sacramento Valley from the Vina Plains in Butte County south of the Sacramento area in Sacramento County and west to the Jepson Prairie region of Salano County. The pools inhabited by the vernal pool tadpole shrimp range in size from 5 square meters (16.4 square ft) in the Mather Air Force Base area of Sacramento County to the 36 hectare (89 acre) Olcott Lake at Jepson Prairie. The pools at Jepson Prairie and Vina Plains have a neutral pH, and very low conductivity, TDS, and alkalinity (Barclay and Knight 1984; Eng *et al.* 1990). These pools are most commonly located in grass bottomed swales of unplowed grasslands in old alluvial soils underlain by hardpan, or in mud-bottomed pools containing highly turbid water. All pools known to be inhabited by this species are filled by winter and spring rains and may last until June.

Previous Federal Action

Ms. Roxanne Bittman petitioned the Service to list the Conservancy fairy shrimp, longhorn fairy shrimp, vernal pool fairy shrimp, and California linderiella as endangered species in a letter dated November 19, 1990, which was received by the Service on November 20, 1990. Ms. Bittman submitted additional information on these species in a letter dated November 20, 1990, which was received on November 26, 1990. On March 21, 1991, the Service determined in the 90-day finding that the petition contained substantial information indicating that the action requested may be warranted. A notice announcing this finding was published in the **Federal Register** on August 30, 1991 (56 FR 426968). Ms. Dee Warenycia petitioned the Service to list the vernal pool tadpole shrimp as an endangered species in a letter dated April 28, 1991, which was received by the Service on April 30, 1991. On November 21, 1991, the Service determined in the administrative 90-day finding that the petition contained substantial information that the action requested may be warranted. This proposal to list the four fairy shrimp and the vernal pool tadpole shrimp is based on available scientific and commercial information, various scientific papers and unpublished reports, and constitutes the 1-year finding for the two petitioned actions.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), California linderiella (*Linderiella occidentalis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

Vernal pools and other ephemeral bodies of water inhabited by these animals are imperiled by a variety of human-caused activities; primarily urban development, water supply/flood control activities, and conversion of land to agricultural use. Habitat loss occurs from direct destruction and modification of pools from filling, grading, discing, leveling, and other activities. Vernal pools also are indirectly affected by modifications of surrounding uplands that alter the vernal pool watershed.

Rapid urbanization of areas containing vernal pools poses a significant threat to the five species proposed for listing herein. In the Sacramento area, at least four pool complexes that contained suitable habitat for the vernal pool fairy shrimp, California linderiella, and the vernal pool tadpole shrimp were eliminated by urban development in the late 1980's. Mitigation measures were either lacking or unsuccessful. However, mitigation measures requires for loss of vernal pool plants at these locations may not benefit the fairy shrimps. In general, the growth rate of human populations and associated urban development throughout the Central Valley is equal to or exceeds that of any other region in California. Indicative of this growth rate are proposals to develop several new towns within the ranges of the vernal pool fairy shrimp, California linderiella and the vernal pool tadpole shrimp. As an example, two towns proposed to be

located in Placer and San Joaquin Counties would contain 80,000 and 44,000 people, respectively, and would likely impact significant amounts of vernal pool habitat for these species (Wiegand 1991).

In the Laguna Creek-Elk Grove region of the Sacramento Valley, residential development projects pose a severe threat to vernal pool complexes that are believed to be inhabited by the vernal pool fairy shrimp, California linderiella, and vernal pool tadpole shrimp populations. These proposed and ongoing projects, sponsored by private interests and local governments, include, but are not limited to modifications to Strawberry, Elk Grove, and Laguna Creeks; Elk Grove Boulevard-Interstate 5 interchange; and at least seven housing developments in this area (Cay Goude, U.S. Fish and Wildlife Service, pers. comm., 1990).

Proposed projects elsewhere in the Sacramento and San Joaquin Valleys that could adversely affect populations of the fairy shrimp and vernal pool tadpole shrimp include the closure of Mather Air Force Base (if the area is proposed for development after closure), at least three urban development projects, several proposed surface mines, and the Merced County Streams project (Cay Goude and Monty Knudsen, U.S. Fish and Wildlife Service, pers. comm., 1990).

The Service has received information that vernal pools located in the Sacramento area that are likely to have provided habitat for the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp have been filled without authorization from the U.S. Army Corps of Engineers (Corps) (Tricia Richards, Sacramento County Planning and Community Development, *in litt,* June 26, 1991). Another site in Stanislaus County that potentially may have contained 150 acres of vernal pool habitat for the vernal pool fairy shrimp and the California linderiella was converted to irrigated pasture sometime in 1990 (Martha Naley, Fish and Wildlife Service, pers. comm., 1991).

In other areas of the State, significant vernal pools, such as at Skunk Hollow in Riverside County, that contain the California linderiella and the vernal pool fairy shrimp are likely to be eliminated by urban development and possibly agricultural conversion (Art Davenport, Fish and Wildlife Service, pers. comm., 1990). In San Luis Obispo County, most of the known sites for the longhorn fairy shrimp and vernal pool fairy shrimp are located in areas subdivided and roaded for sale and development (Eng *et al.* 1990). To date, some of the sites have been cleared, and continued habitat loss is likely in the foreseeable future.

Because of rapid urbanization, several highway projects are proposed that may affect the vernal pool fairy shrimp, California linderiella, and the vernal pool tadpole shrimp. The California linderiella, which has been recorded from vernal pools in the Lincoln area of Placer County, is threatened by the construction of the proposed State Highway 65 Lincoln by-pass (Cay Goude, Fish and Wildlife Service, pers. comm., 1990). Vernal pools in the Sacramento area that are inhabited by the vernal pool fairy shrimp, California linderiella, and the vernal pool tadpole shrimp could be adversely affected by the proposed widening of State Highway 16. The State of California has proposed to extend State Highway 505 from Vacaville to Collinsville in Solano County. This project could directly and indirectly impact vernal pools inhabited by the Conservancy fairy shrimp and the vernal pool tadpole shrimp (Cay Goude, pers. comm., 1990).

Agricultural conversion poses a widespread threat to remaining vernal pools in the Central Valley. Sites containing the vernal pool fairy shrimp near Pixley in Tulare County and Haystack Mountain are privately-owned habitat remnants surrounded by agricultural operations (Eng *et al.* 1990). In recent months, two sites with significant vernal pools in the Sacramento Valley that likely contained the California linderiella, vernal pool fairy shrimp, and the vernal pool tadpole shrimp were plowed or disced and seeded with winter wheat (Cay Goude, Fish and Wildlife Service, pers. comm., 1990). Discing and other farming or ranching practices, including heavy grazing are agricultural practices employed in vernal pools and swales. Many of these activities are exempt from regulation under section 404 of the Clean Water Act (U.S. Environmental Protection Agency and U.S. Department of the Army 1990), and therefore may not require a permit from the Army Corps of Engineers.

Water-storage projects proposed for the Kellogg Creek watershed in eastern Contra Costa County could greatly reduce or eliminate a vernal pool complex that supports the highest diversity of fairy shrimp in the State (California Department of Fish and Game 1983). The rock pools in this area are inhabited by the vernal pool fairy shrimp, longhorn fairy shrimp and California linderiella. The proposed Los Vaqueros and Kellogg Reservoirs could impact substantial portions of this watershed (Jones and Stokes Associates 1986, 1989, 1990).

Proposed utility projects at several sites may affect all of the fairy shrimp and the vernal pool tadpole shrimp proposed for listing herein. Proposed construction of high-pressure natural gas and petroleum pipelines, and three 230,000 volt electric transmission lines at the Los Vaqueros and Kellogg Reservoir sites could adversely affect the vernal pool fairy shrimp, longhorn fairy shrimp, and California linderiella (Contra Costa Water District and U.S. Bureau of Reclamation 1991, Jones and Stokes Associates 1991). A proposed natural gas pipeline project along the west side of the Sacramento Valley south through Solano County could impact habitat of the Conservancy fairy shrimp, vernal pool fairy shrimp, California linderiella, and the vernal pool tadpole shrimp (Federal Energy Regulatory Commission 1991, Arnold 1990).

Off-road vehicle (ORV) use also imperils fairy shrimp and the vernal pool tadpole shrimp inhabiting vernal pools (Bauder 1986, 1987). ORVs cut deep ruts, compact soil, destroy native vegetation, and alter pool hydrology. Fire fighting, security patrols, military maneuvers, and recreational activities have cumulatively damaged vernal pool habitats in many areas (Bauder 1986, 1987). In Solano County, a proposed off-road recreational park adjacent to the Jepson Prairie Reserve owned by The Nature Conservancy could adversely impact populations of the Conservancy fairy shrimp and the vernal pool tadpole shrimp at Olcott Lake.

Other secondary impacts associated with urbanization include disposal of waste materials into habitat for the five species proposed for listing herein (Bauder 1986, 1987). Disposal of concrete, tires, refrigerators, sofas, and other trash adversely affects these animals by eliminating habitat, disrupting pool hydrology or, in some cases, through release of toxic substances. Dumping of garbage, including motor oil and household chemicals, may have changed the water chemistry of the vernal pools in Isla Vista in Santa Barbara County resulting in the extirpation of the California linderiella at that site (Simovich undated). Dust and other forms of air or water pollution from commercial development or agriculture projects also may be deleterious to these animals.

Human activities that alter the watershed of vernal pools may indirectly affect the fairy shrimp and the vernal pool tadpole shrimp. Many of the plants and several of the aquatic

invertebrates that occur in vernal pools are dependent upon specific hydrologic patterns that occur during wet winters followed by spring and summer drying. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986, 1987). Activities that reduce the extent of the watershed or that alter runoff patterns (i.e., amounts and seasonal distribution) may eliminate the animals, reduce their population sizes or reproductive success, or shift the location of sites inhibited by these animals.

Vernal pool watershed areas have been reduced by conservation of uplands to paved or grass-turf surfaces, road damming, or other construction activities. Physical barriers, such as roads and canals, may deepen a vernal pool upstream of a barrier and can isolate a fairy shrimp or vernal pool tadpole shrimp population from a portion of its aquatic habitat. Surface runoff, including nonpoint runoff, is altered by disturbance from trenching, grading, scraping, off-road vehicles, intensive livestock grazing, or other activities that change amounts, patterns, and direction of surface runoff to ephemeral drainages. Presence of summer water also affects the hydrologic pattern. Introduction of water during the summer disrupts the life cycles of the fairy shrimp and the vernal pool tadpole shrimp by subjecting them to greater levels of predation by animals requiring more permanent sources of water. Increased water also converts vernal pools to unsuitable marsh habitat dominated by emergent vegetation (e.g., cattails).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Not known to be applicable.

C. Disease or Predation

Not known to be applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline of these species is loss of habitat from human activities. State and local laws and regulations have not been passed to protect the five species proposed for listing herein. Other regulatory mechanisms necessary for the conservation of vernal pools have proven inadequate and ineffective.

The State environmental review process under the California Environmental Quality Act for projects that result in loss of sites that support these animals sometimes requires development of mitigation plans. However, the effectiveness of this statute in protecting vernal pool habitat has not been consistent. As documented above, fairy shrimp and vernal pool tadpole shrimp habitat has been eliminated without offsetting mitigation measures. Furthermore, mitigation plans that have been required were designed specifically for vernal pool plants. No plans to date have included provisions for any of the four fairy shrimp species or the vernal pool tadpole shrimp. The artificial creation of vernal pools as mitigation habitat is highly experimental (Ferren and Gevirtz 1990, Zedler and Black 1988). Their effectiveness for the species proposed herein for listing is unknown. Vernal pools are intricate ecosystems and efforts to recreate them may not be successful until they are more fully understood (Ferren and Gevirtz 1990).

Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which include navigable waters, wetlands (e.g., vernal pools), and certain other waters. The Clean Water Act requires potential applicants to notify the Corps prior to undertaking any activity (grading, discharge of soil or other fill material, etc.) that would result in fill of wetlands. Nationwide Permit 26 has been issued to regulate fill of wetlands of less than 10 acres. Under Nationwide Permit 26, most proposals that involve fill of wetlands smaller than 1 acre are considered permitted. Where fill would occur in a wetland between 1 and 10 acres, the Corps circulates for comment a predischarge notification to the Service and other interested parties to determine whether or not the proposed fill activity and associated impacts warrant a full public notice.

Individual Corps permits are required for discharge of fill material into wetlands greater than 10 acres. The review process for issuance of individual permits is more intensive. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits typically include special conditions that avoid or mitigate environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit, unless a threatened or endangered species or other significant resources are known to occur on the site.

Most vernal pools and swales within the range of these four species of fairy shrimp and the vernal pool tadpole shrimp encompass less than 10 acres. The discontinuous distribution of these sites has allowed some landowners to divide several large projects into several smaller projects. Wetland acreage on these smaller projects is usually under 10 acres, and, therefore, most projects qualify for Nationwide Permit 26. The discontinuous configuration of the pools and swales further obscures separation of these wetland losses.

The Sacramento District of the Corps has several thousand vernal pools under its jurisdiction (Coe 1988), including most of the geographic range encompassing the species proposed for listing herein. Areas occupied by these animals are undergoing rapid urbanization and current trends indicate 60 to 70 percent of these pools could be destroyed in the next 10 to 20 years (Coe 1988). From January to October 1990, the Corps issued at least 52 Nationwide 26 permits that accounted for the loss of at least 57 acres of vernal pools in the Central Valley area (Marilynn Friley, Fish and Wildlife Service, per. comm., 1990). An acre of jurisdictional vernal pool wetlands is part of a much larger seasonal watershed not regulated by the Corps.

The Conservancy fairy shrimp, vernal pool fairy shrimp, California linderiella, and the vernal pool tadpole shrimp are found in vernal pools at the Vina Plains in Tehama County. They likely co-inhabit pools that also support *Limnanthes floccosa* subsp. *californica* (Butte County meadowfoam). This plant was proposed for listing as an endangered species on February 15, 1991 (56 FR 6345). these Crustaceans could be indirectly protected by actions taken to conserve the Butte County meadowfoam. A "conservation plan" has been drafted for the City of Chico (Jokerst 1989) that details various actions designed to conserve the plant, such as creation of a preserve system. However, the draft plan does not address plant populations and vernal pool habitat outside City limits. Moreover, the City of Chico has yet to adopt the plan. Meanwhile, as in other vernal pool areas, the Corps has issued nationwide permits for numerous residential developments in the Chico area.

The Nature Conservancy (Conservancy) owns or controls vernal pool habitat at a number of locations, including Jepson Prairie in Solano County, Vina Plains in Tehama County, the Carrizo Plain in San Luis Obispo County, and Santa Rosa Plateau area in Riverside County. All four fairy shrimp species and the vernal pool tadpole

shrimp are represented on Conservancy property. Management plans for Conservancy properties include provisions to protect vernal pools, but do not specifically address these species. Surrounding privately-owned vernal pool habitat is not protected.

E. Other Natural or Man-made Factors Affecting Their Continued Existence

The areas supporting the fairy shrimp species and the vernal pool tadpole shrimp are usually small, and unforeseen natural and human-caused catastrophic events could cause the elimination of some sites. The five Crustaceans may be vulnerable to random fluctuations or variation (stochasticity) due to annual weather patterns, availability of food, and other environmental factors. Most of the populations of the five species are isolated from other conspecific populations and are distributed in discontinuous vernal pool systems. Such populations are vulnerable to stochastic extinction.

The Service has carefully assessed the best scientific and commercial information regarding past, present, and future threats faced by these species in determining to propose this rule. As described in more detail under Factors A, D, and E, available information indicates that the vernal pool fairy shrimp, Conservancy fairy shrimp, longhorn fairy shrimp, California linderiella, and the vernal pool tadpole shrimp may warrant, listing pursuant to section 4(a)(1) of the Act. The four fairy shrimp and the vernal pool tadpole shrimp are imperiled by rapid urbanization, conversion of land to agricultural use, off-road vehicle use, and changes in hydrologic patterns in areas they occupy. Only a small proportion of the pools are permanently protected from these threats. Stochastic events, which commonly affect small isolated populations, also may result in extirpation of some populations of these species. The majority of the populations of the species proposed for listing herein are located in or near regions undergoing urbanization, and relatively few are found in protected areas. Based on this evaluation, the preferred action is to propose to list the vernal pool fairy shrimp (*Branchinecta lynchi*), Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), California linderiella (*Linderiella occidentalis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) as endangered. For reasons discussed below, the Service is not proposing to designate critical habitat for these animal species at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for these species at this time. A number of sites inhabited by the species proposed for listing herein occur on private land that is undergoing rapid urban and agricultural development. Some areas reportedly have been destroyed to eliminate vernal pool characteristics and escape regulatory jurisdiction by the Corps. Because vernal pool habitats are small and easily identified, publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these species more vulnerable to incidents of vandalism. Affected agencies and principal landowners have been notified concerning management requirements of these animals. Protection of the habitat of these species will be addressed through the recovery process and through the section 7 consultation process. Federal involvement in areas where these animals occur can be identified without designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these animals is not prudent at this time, because such designation likely would increase the degree of threat from vandalism or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires recovery actions be carried out for all listed species. Such actions are initiated following listing. The protection required to Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered on threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the response Federal agency must enter from formal consultation with the Service.

As described above, the U.S. Army Corps of Engineers exerts section 404 jurisdiction over habitats supporting these animals. Nationwide permits are not issued where a federally listed endangered or threatened species would be affected by the proposed project. When listed species may be affected, formal consultation is carried our pursuant to section 7.of the Act. In addition, the Department of Housing and Urban Development (HUD) may insure housing loans in areas that presently support these animals; HUD actions regarding these loans also would be subject to review by the Service under section 7 of the Act.

Other Federal agencies that possibly could be affected if these animals are listed would include the U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and the Department of Transportation (Federal Highways Administration). Populations of the longhorn fairly shrimp and California linderiella occur on property owned by the Bureau of Land Management at the Carrizo Plain in San Luis Obispo County and the National Park Service at Point Reyes National Seashore in Marin County.

The listing of these fairy shrimp and the vernal pool tadpole shrimp also would bring sections 5 and 6 of the Endangered Species Act into effect. Section 5 authorizes acquisition of lands for the purposes of conserving endangered and threatened species. Pursuant to section 6, the Service would be able to grant funds to affected states for management actions aiding in protection and recovery of these animals.

Listing these fairy shrimp and the vernal pool tadpole shrimp as endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the animals. The plan(s) would establish a

framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. They also would described site-specific management actions necessary to achieve conservation and survival of the fairy shrimp and the vernal pool tadpole shrimp.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species set forth a series of prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions can apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, to alleviate economic hardship in certain circumstances, and/or for incidental take in connection with otherwise lawful activities. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104 or FTS 921–2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal be as accurate and effective as possible in the conservation of endangered or threatened species. Therefore any comments or suggestions for the public, other concerned government agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to these fairy shrimp or the vernal pool tadpole shrimp;

(2) The location of any additional populations of the Conservancy fairy shrimp, vernal pool fairy shrimp, longhorn fairy shrimp, California linderiella, or the vernal pool tadpole shrimp and the reasons that any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these fairy shrimp and the vernal pool tadpole shrimp; and

(4) Current or planned activities in the subject areas that may impact these fairy shrimp and the vernal pool tadpole shrimp;

Any final decision on the proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing to the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defend under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento, California Field Office (see ADDRESSES section).

Author

The primary author of this proposed rule is Christopher D. Nagano, staff entomologist, Sacramento Field Office, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625. 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under CRUSTACEANS, to the Lists of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	
CRUSTACEANS							
Linderiella, California	*Linderiella occidentalis*	U.S.A. (CA)	NA	E		NA	NA
•	•	•	•	•	•	•	
Shrimp, Conservancy fairy	*Branchinecta conservatio*	U.S.A. (CA)	NA	E		NA	NA
•	•	•	•	•	•	•	
Shrimp, longhorn fairy	*Branchinecta longiantenna*	U.S.A. (CA)	NA	E		NA	NA
•	•	•	•	•	•	•	
Shrimp, vernal pool fairy	*Branchinecta lynchi*	U.S.A. (CA)	NA	E		NA	NA
•	•	•	•	•	•	•	
Shrimp, vernal pool tadpol	*Lepidurus packardi*	U.S.A. (CA)	NA	E		NA	NA
•	•	•	•	•	•	•	

Dated: April 22, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–10709 Filed 5–7–92; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 20

RIN 1018–AB60

Migratory Bird Hunting: Migratory Bird Hunting Regulations Proposals for Certain Federal Indian Reservations and Ceded Lands for the 1992–93 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent; request for proposals from Indian tribes desiring special migratory bird hunting regulations for the 1992–93 hunting season.

SUMMARY: The principal purpose of this notice of intent is to request proposals from Indian tribes that wish to establish special migratory bird hunting regulations for the 1992–93 hunting season, under the interim guidelines implemented for this purpose in September 1985. An additional purpose is to provide notification that the early and late season final rulemaking procedure, which was initiated in the last regulatory cycle to incorporate greater detail, will again be a feature of the tribal regulations. Proposals must include the details described later in this document. The U.S. Fish and Wildlife Service (Service) also welcomes comments concerning this notice of intent.

DATES: Proposals and comments should be submitted as soon as possible and must be received by June 5, 1992.

ADDRESSES: All proposals and comments should be submitted to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street, NW., Washington, DC 20240. A copy of the proposal should be sent to the appropriate Service Regional office at the address shown near the end of this document. Also, tribes that request special hunting regulations for tribal members on ceded lands should send a copy of the proposal to officials in the affected State(s).

FOR FURTHER INFORMATION CONTACT: Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634, Arlington Square, 1849 C Street, NW., Washington, DC 20240, Telephone: 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

Beginning with the 1985–86 hunting season, the Service has employed interim guidelines described in the June 4, 1985 **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and nontribal members throughout their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to establishing migratory bird hunting regulations for nontribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by nontribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. As requested, the Service also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

One of the guidelines provides for the continuation of harvest of waterfowl and other migratory game birds by tribal members on reservations where it is a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season required by the 1916 Canadian Migratory Bird Treaty, and it is not so large as to adversely affect the status of the migratory bird resource. Since the 1987–88 hunting season, the Service has reached annual agreeement with the Mille Lacs Band of Chippewa Indians for hunting by tribal members on their lands in Minnesota. The Service will continue to consult with tribes that wish to reach a mutal agreement on hunting regulations for on-reservation hunting by tribal members.

The guidelines should not be viewed as inflexible. Nevertheless, the Service believes that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regualtions established by

the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1992–93 hunting season must submit a proposal that includes:

(1) The requested hunting season dates and other details regarding regulations to be observed;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regualtions.

For the 1991–92 season, for the first time, final hunting regulations established for Indian tribes had separate rulemakings for early and late seasons. This is because a primary purpose for publishing rulemakings in the **Federal Register** is to inform, as fully as possible, the affected entities and the general public of actions regulatory agencies propose and ultimately take. To fully meet regulatory agency legal responsibilities and inform, the rulemakings should contain an appropriate level of relevant detail. Prior to the 1991–92 season, in these regulations, little detail had been included with only, in many instances, references to unfinalized State regulations and final Federal frameworks. Thus, the Service modified the tribal regulations procedure somewhat in an attempt to allow the final regulations to better stand-alone and, thus, provide greater clarity of requirement with regard to season dates, season lengths, and bag/possession limits. In the 1992–93 migratory bird hunting season, the Service will again publish separate rulemakings for early and late season final regulations to meet the above objectives. However, in those few instances where a waterfowl season begins in the early season, it may still be necessary to describe the regulations generally, as in past years, in relation to unpublished final frameworks.

As in previous years, only a single proposed rule will be published that will include both early and late seasons. For the purposes of these regulations, an early season is one that begins before October 1 and a late season is one that begins on October 1 or later. Although only a rough distinction, early seasons usually focus on nonwaterfowl species i.e., doves, pigeons, etc., and late seasons usually focus on waterfowl. The Service is setting a target date for publishing the proposed rulemaking, containing tribal proposals, of July 17, 1992, with final rules for early and late seasons of about August 21 and September 18, 1992, respectively.

Again, the Service notes that duck hunting regulations for recent hunting seasons have been more restrictive because of the serious decline in duck populations caused by a lengthy period of drought in the prairies region of Canada and the United States. The drought was specially severe during 1988–1990 and several years of favorable environmental conditions probably will be required before ducks will be able to reproduce successfully again in many prairie areas. In 1992, the Service will continue to monitor closely the status of duck populations and Indian tribes should consider the current situation when developing their hunting season proposals.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in the proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

The Service notes also that because of a long-term decline of mourning doves in the Western Management Unit, the recent hunting regulations for States in the unit have been more restrictive than usual. Similar regulations likely will be established in the unit for this species for the 1992–93 hunting season, with the aim of increasing the size of the population.

Pertinent details in proposals received from tribes will be published for public review in later **Federal Register** documents. Because of the time required for the Service and public review, Indian tribes that desire special migratory bird hunting regulations for the 1992–93 hunting season should submit their proposals as soon as possible, but no later than June 5, 1992. Tribal inquiries regarding the guidelines and proposals should be directed to the appropriate Service Regional office.

FISH AND WILDLIFE SERVICE REGIONAL OFFICES

[Address Regional Director, U.S. Fish and Wildlife Service]

States	Address	Telephone No.
California, Hawaii, Idaho, Oregon, Washington	911 NE 11th Ave., Portland, OR 97232–4181	503/231–6118
Arizona, New Mexico, Texas	PO Box 1306, 500 Gold Ave., SW Albuquerque, NM 87103	505/766–2321
Iowa, Illinois, Michigan, Minnesota, Missouri,Ohio, Wisconsin	Fed. Bldg., Ft. Snelling, Twin Cities, MN 55111	612/725–3563
Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.	Russell Bldg., Room 1200, 75 Spring St. SW, Atlanta, GA 30303	404/331–3588
Connecticut, Delaware, Massachusetts, Maryland, Maine, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.	One Gateway Center, Ste. 700, Newton Corner, MA 02158	617/965–5100
Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, Wyoming.	PO Box 25486, Denver Federal Center, Denver, CO 80225	303/236–7920
Alaska	1011 E. Tudor Road, Anchorage, AK 99503	907/7786–3542

Authorship

The primary author of this Notice of Intent is Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually may be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Dated: April 16, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-10739 Filed 5-7-92; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed 1992–1993 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish annual hunting regulations for certain migratory game birds. The taking of migratory birds is prohibited unless specifically provided for by regulation. These regulations will permit the taking of the designated species during the 1992–93 season. The Service annually prescribes outside limits (frameworks) within which States may select hunting seasons. These seasons provide recreational hunting opportunities to the public and aid Federal and State governments in the management of migratory game birds, and are designed to maintain harvests at levels compatible with migratory bird population and habitat conditions.

DATES: The comment period for proposed early-season regulations frameworks will end on July 20, 1992; and for late-season proposals on August 30, 1992. The public hearing for early-season regulations will be held on June 25, 1992, at 9 a.m. The public hearing for late-season regulations will be held on August 6, 1992, at 9 a.m.

ADDRESSES: Both public hearings will be held in the Auditorium, Department of the Interior Building, 1849 C Street NW., Washington, DC. Written comments on the proposals and notice of intention to testify at either hearing may be mailed to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Notice of Intention to Establish Open Seasons

This notice announces the intention of the Director, U.S. Fish and Wildlife Service, to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1992–1993 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR Part 20.

"Migratory game birds" are those migratory birds so designated in conventions between the United States and several foreign nations for the protection and management of these birds. For the 1992–93 hunting season, regulations will be proposed for certain designated members of the avian families Anatidae (ducks, geese, brant, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and moorhens and gallinules); and Scolopacidae (woodcock and snipe). These proposals are described under Proposed 1992–93 Migratory Game Bird Hunting Regulations (Preliminary) in this document. Definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, were published in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1992–1993

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. Proposed season frameworks are set forth for various groups of migratory game birds for which these regulations ordinarily do not vary significantly from year to year. Proposals relating to the harvest of migratory game birds that may be initiated after publication of this proposed rulemaking will be made available for public review in supplemental proposed rulemakings to be published in the **Federal Register**. Also, additional supplemental proposals will be published for public comment in the **Federal Register** as population, habitat, harvest, and other information becomes available.

Because of the late dates when certain portions of these data become available, it is anticipated that comment periods on some proposals will necessarily be abbreviated. Special circumstances that limit the amount of time which the Service can allow for public comment are involved in the establishment of these regulations. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on one hand, to establish final rules at a time early enough in the summer to allow State agencies to select and publish season dates and bag limits prior to the hunting seasons and, on the other hand, the lack of current data on the status of most waterfowl before late July.

Because the process is strongly influenced by the times when information is available for consideration, the overall regulations process is divided into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1992–1993 regulatory cycle relating to public hearings and **Federal Register** notifications are illustrated in the accompanying diagram. Dates shown relative to publication of **Federal Register** documents are target dates.

Sections of this and subsequent documents outline hunting frameworks and guidelines that are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's Geese
8. Tundra Swans
9. Sandhill Cranes
10. Coots
11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Subsequent documents will refer only to numbered items requiring attention. Therefore, items requiring no attention

will be omitted and the remaining numbered items will be discontinuous and appear incomplete.

Hearings

Two public hearings pertaining to 1992–1993 migratory game bird hunting regulations are scheduled. Both hearings will be conducted in accordance with 455 DM 1 of the Departmental Manual. On June 25, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, on C Street, between 18th and 19th Streets, NW., Washington, DC. This hearing is for the purpose of reviewing the status of migratory shore and upland game birds. Proposed hunting regulations will be discussed for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. On August 6, a public hearing will be held at 9 a.m. in the Auditorium of the Department of the Interior Building, address above. This hearing is for the purpose of reviewing the status and proposed regulations for waterfowl not previously discussed at the June 25 public hearing. The public is invited to participate in both hearings.

Persons wishing to make a statement at these hearings should write the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Copies of statements should be filed with the Director before or during each hearing.

Public Comments Solicited

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons are invited to submit written comments, suggestions, or recommendations regarding the proposed amendments. Final promulgation of migratory game bird hunting regulations will take into consideration all comments received by the Service. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. Interested persons are invited to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

Comments received on the proposed annual regulations will be available for public inspection during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. Specific comment periods will be established for each series of proposed rulemakings. All relevant comments will be accepted through the closing date of the comment period on the particular proposal under consideration. The Service will consider, but possibly may not respond in detail to, each comment. As in the past, the Service will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will be present at the following winter meetings of the various Flyway Councils:

DATE: March 29, 1992

—Atlantic Flyway Council, 8:30 a.m.
—Mississippi Flyway Council, 8:30 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 8:30 a.m.
—National Waterfowl Council, 3:30 p.m.

The Council meetings will be held at the Convention Center in Charlotte, North Carolina.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with the Environmental Protection Agency on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341).

Endangered Species Act Consideration

Prior to issuance of the 1992–93 migratory game bird hunting regulations, consideration will be given to provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531-1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of this Act may cause changes to be made to proposals in this and future supplemental proposed rulemaking documents.

Regulatory Flexibility Act, Executive Order (E.O.) 12291, and the Paperwork Reduction Act

A Determination of Effects concluded that the hunting frameworks being proposed for 1992-93 were "major" rules, subject to regulatory analysis. In accordance with Office of Management and Budget instructions, a Final Regulatory Impact Analysis (FRIA) was prepared in 1990. This analysis was updated for 1992. The 1992 FRIA update included waterfowl hunter and harvest information from the 1990–91 season. The summary of the 1992 update follows:

"New information which can be compared to that appearing in the 1990 Final Regulatory Impact Analysis (FRIA) includes estimates of the 1990 fall flight of ducks from surveyed areas, and hunter activity and harvest information from the 1990–91 hunting season. The total 1990 fall flight of ducks and the fall flights in each flyway were predicted to be unchanged from those of 1989. However, because of the continued poor status of ducks, hunting regulations were developed that maintained the reduced hunting opportunity that was established in the 1988–89 season. Hunter numbers remained unchanged, but waterfowl hunters spent more days afield than in the previous year. Many non-regulatory factors influence hunter participation."

Copies of the updated FRIA are available upon request from the Office of Migratory Bird Management. The address is indicated under the caption **ADDRESSES**.

The Department of the Interior has determined that this document is a major rule under E.O. 12291 and certifies that this document will have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Service plans to issue its Memorandum of Law for the migratory game bird hunting regulations at the time the first of these rules is finalized.

Authorship

The primary authors of the proposed rule on annual hunting regulations are William O. Vogel and Robert J. Blohm, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief, (703) 358–1714.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992-93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 701–711)

and the Fish and Wildlife Improvement Act of November 8, 1978, as amended, (16 U.S.C. 712).

Dated: February 27, 1992.

James F. Spagnole,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1992–1993 Migratory Game Bird Hunting Regulations (Preliminary)

The following general frameworks and guidelines for hunting migratory game birds during 1992–1993 seasons are proposed. Changes or possible changes, when noted, are in relation to 1991–92 final frameworks. In this respect, minor date changes due to annual variation in the calendar dates of specific days of the week, are regarded as "no change." Geographic descriptions for early seasons are contained in the August 21, 1991, **Federal Register** (56 FR 41608) and those for late seasons are in the September 26, 1991, **Federal Register** (56 FR 49104). All mentioned dates are inclusive; shooting hours, unless otherwise specified, are one-half hour before sunrise to sunset; and possession limits, unless otherwise specified, are twice the daily bag limit. Items in this proposed rulemaking are subject to change depending on public comments, and additional data and information that may be received later.

1. *Ducks.* (Possible change) Pending current information on duck populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, specific duck framework proposals for opening and closing dates, season lengths, and bag limits are deferred. Closed seasons will be considered by the Service where warranted.

There are several possible changes that the Service can address in this document. These include framework dates, canvasback harvest management, pintail harvest management, special seasons, and development of stabilized regulations.

A. *Framework Dates.* Framework dates are the earliest and latest dates within which States may select hunting seasons. Framework dates are uniform within a flyway and in the past have been manipulated with other regulations in response to changes in duck abundance. In the most recent 3 years, opening framework dates have ranged from October 5 to 7 and closing framework dates have ranged from January 5 to 7. Generally, northern-latitude States prefer the opening dates to be as early as possible in October, while southern-latitude States prefer the closing dates to be as late as possible in January. The Service has prepared a draft assessment of the use of duck-hunting framework dates in the lower 48 States in response to requests to consider stabilizing dates. The Service will accept comments on this draft assessment until May 1, 1992. These comments will be incorporated into a final report which will be available for review by late July 1992. In the interim, the Service proposes to maintain the option of using framework dates in combination with other measures in the management of duck harvest levels.

B. *Canvasback Harvest Management.* In the March 6, 1991, **Federal Register** (56 FR 9464), the Service asked the Flyway Councils to review existing harvest-management criteria for canvasbacks and expressed its intent to develop revised criteria based on an assessment of current information. The Service reiterates that two questions need to be addressed: (1) are existing guidelines, based on specific breeding-population indices, the most appropriate, and (2) should canvasbacks continue to be managed as two distinct populations. Currently, the Service is managing canvasbacks as distinct Eastern and Western Populations, however the results of a recent inspection of band-recovery data do not support the concept of distinctly separate population units. Because of the canvasback's need for protection when populations reach low levels, more work is needed to identify an appropriate harvest strategy before considering nationwide open seasons. Consequently, the Service requests that the Flyway Councils continue to work with the Service to develop appropriate long-term harvest strategies for canvasbacks. As an interim strategy during the 1992 regulations-development process, the Service will continue to use existing criteria, including eastern and western population thresholds, for determining seasons.

C. *Pintail Harvest Management.* In the September 26, 1991, **Federal Register** (56 FR 49104), the Service acknowledged the comments expressed by the Flyway Councils that, due to the already-restrictive regulations and low harvest rates, any further restrictive action for pintails short of complete season closure would have limited benefit. Because of the prospects for improved pintail breeding habitat and a consequent improvement in the status of this species in 1992, the Service did not change frameworks governing the hunting of pintails in 1991. However, the Service stated that if the status of pintails did not improve in 1992, further restrictions likely would be instituted. This position remains unchanged.

D. *Special Seasons.*

i. *Special September Teal Seasons.* The special September teal season was suspended in 1988 due to the poor status of the continental blue-winged teal population. Based on a subsequent review, the Service endorsed the concept of the September teal season, but continued the suspension pending recovery of depressed blue-winged teal numbers and cooperative development of implementation criteria. Implementation criteria should include guidelines for how these seasons are regulated and evaluated in the future. These guidelines must address several basic questions, including: (1) what biological conditions (e.g., breeding population level and trend) must be met before these seasons are offered, (2) what harvest rates are permissible at various population levels, (3) should season length and daily bag limit during the September season be flexible, and if so, how will these be regulated, and (4) what provisions can be made to facilitate future evaluations? The Service reiterates that these implementation criteria are necessary prior to lifting the suspension on the September teal season. Additional input from the Flyway Councils, States, and other interested parties will be necessary before suitable criteria can be adopted.

ii. *Special Scaup Season.* First offered in 1966, the special scaup season was suspended in 1988 due to the poor status of the continental scaup population. Based on a subsequent review, the Service continued the suspension of the special season because it could not be evaluated adequately with existing data. In the September 26, 1991, **Federal Register** (56 FR 49109), the Service stated its intent to continue the suspension pending the cooperative development of an adequate evaluation plan. The Service believes the following considerations are important in any effort to reinstate special scaup seasons: (1) whether additional harvest opportunities for scaup are warranted given current population status, (2) the need for a well-planned study, including objectives and an appropriate experimental design that specifies the type and extent of data collection, the statistics and criteria to be used in evaluation, and which decisions will be made if the results of the evaluation are inconclusive, and (3) how best to determine the composition of the harvest (i.e., proportions of lesser scaup, greater scaup, and non-target species) and assess the resulting impacts on the respective status of each species, and (4) the general merit and advisability of the proposal, including assessment of costs

and benefits. The Service is soliciting comments from the Flyway Councils, States, and other concerned parties regarding interest in designing such an evaluation plan.

iii. *Experimental September Duck Seasons.* Since 1981, this season has been offered to Florida, Kentucky, and Tennessee. Although they were originally designed for blue-winged teal and southern wood ducks, since 1988 the seasons have been limited tc wood ducks. In the March 6, 1991, **Federal Register** (56 FR 9464), the Service gave notice that continuation of September duck seasons beyond 1991 would be contingent upon the ability of the Flyway Councils and States to demonstrate significant progress in developing regional wood duck population-monitoring plans and evaluation and decision criteria for September seasons. In January 1992, representatives from the Service and the Atlantic and Mississippi Flyway Technical Sections met to discuss management goals for wood ducks and possible strategies for implementing regional wood duck population-monitoring programs. This initial progress is encouraging and the Service supports continued efforts to develop the databases necessary to better manage wood duck populations. Four States (North and South Carolina, Georgia, and Florida) are currently formulating a regional wood duck population-monitoring program, and the Service looks forward to working with these States to implement such a program. However, the Service reiterates that continuation of the experimental September duck seasons is contingent upon continued progress in developing regional wood duck population-monitoring programs, as well as the development of regional evaluation and decision criteria for these special seasons.

In the July 15, 1991, **Federal Register** (56 FR 32267), the Service proposed to allow the continuation of pre-sunrise shooting hours during the Florida special season. This decision was based on information submitted by Florida which demonstrated that the impact of pre-sunrise shooting hours on non-target waterfowl species is insignificant. Continued use of pre-sunrise shooting hours in Kentucky and Tennessee is contingent upon the submission of results from studies that satisfactorily demonstrate a negligible impact upon non-target duck species during the one-half hour prior to sunrise. If such information is not provided, shooting hours for the September wood duck seasons in Kentucky and Tennessee will begin at sunrise during the 1992 season.

E. Development of Stabilized Regulations. In the March 6, 1991, **Federal Register** (56 FR 9465), the Service announced its intent to develop guidelines to govern the use of stabilized framework regulations for ducks, including appropriate regulatory levels and criteria for change. The Service reiterates its request to the Flyway Councils, States, and other interested parties for assistance in developing these guidelines. The goal in developing these guidelines will be to provide: (1) a sport harvest consistent with the long-term welfare of duck populations, (2) greater objectivity and predictability in establishing regulations, and (3) greater ability to learn through experience.

The Service is proposing to develop stabilized regulation guidelines in 3 phases, which may take 2–3 years to complete. Phase I will focus on the development of general regulatory mechanisms (or conceptual bases) for managing frameworks. This will be a critical phase and will involve extensive reviews of duck population biology and the role of sport harvest, identification of the variables of management interest (e.g., breeding population size, harvest rate, hunter numbers), and decisions regarding the spatial and temporal scales of the new harvest strategy. Phase II will involve development of specific regulations guidelines (e.g., season length, bag limits, and framework dates) for managing harvest pressure. In this phase the potentials for flyway-specific management strategies (e.g., consideration of derivations of birds, their status, and the capacity of hunters to exert harvest pressure on relevant populations) will be assessed. Phase III will consist of implementation and subsequent evaluation of feedback.

2. *Sea ducks.* (No change) A maximum open season of 107 days is proposed during the period between September 15, 1992, and January 20, 1993, with a daily bag limit of 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, in special sea duck hunting areas (as described in the August 21 1991, **Federal Register** at 56 FR 41608), provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. These limits may be in addition to regular duck bag limits during the regular duck season in the special sea duck hunting areas. In all other areas, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular-duck-season daily bag and possession limits.

3. *Mergansers.* (No change) States in the Atlantic, Mississippi, and Central Flyways may select separate bag limits for mergansers in addition to the regular duck bag limits during the regular duck season. The daily bag limit may not exceed 5 mergansers, including no more than 1 hooded merganser. Elsewhere, mergansers are included within the regular daily bag and possession limits for ducks.

4. *Canada Geese.* (Possible change) The Canadian Wildlife Service, the four Flyway Councils, State conservation agencies, and others traditionally provide population and harvest information used in setting annual regulations for geese and brant. The Midwinter Waterfowl Survey, the past season's waterfowl harvest surveys, and satellite imagery and ground studies for May and June of 1992 will provide additional information. Preliminary proposals for seasons and bag limits are deferred pending receipt of additional information and recommendations.

Additional information regarding the Southern James Bay Population of Canada Geese (SJBP) has become available since last year. The population status of Canada geese nesting on Akimiski Island and the associated mainland areas of James Bay has been a matter of concern in recent years. To help determine the status of this population, studies were begun in 1989 to: (1) develop a breeding ground survey, (2) determine survival rates and distribution, and (3) continue to monitor annual productivity. Preliminary results of the breeding ground survey suggest that this population may be smaller than previously believed. Additional evidence from annual productivity surveys and analyses of existing banding data also suggest that, unlike most Canada goose populations, this group of geese, particularly those on Akimiski Island, are experiencing very low recruitment rates. This low recruitment appears to be related to poor survival of young geese on Akimiski Island. These preliminary results have lead to restrictions in harvest regulations in both the U.S. and Canada in recent years. Such harvest reductions have been endorsed by both the Mississippi and Atlantic Flyway Councils. Data from this year will be evaluated to determine if further restrictions are warranted.

The Service published criteria for special Canada goose seasons in the September 26, 1991, **Federal Register** (56 FR 49104). Beginning in 1992, all special Canada goose seasons must conform to

those criteria. The criteria include a requirement for States, which have seasons extending beyond the experimental period(s), to estimate harvest and hunter activity and report these to the Service annually for all years the seasons are offered. States currently conducting special seasons should ensure that their seasons are in compliance with the published criteria.

5. *White-fronted Geese.* (No change) Preliminary proposals for seasons and bag limits are deferred pending receipt of additional information and recommendations.

6. *Brant.* (No change) Preliminary proposals for seasons and bag limits are deferred pending receipt of additional information and recommendations.

7. *Snow and Ross's Geese.* (Possible change) Verbal reports from Russian Commonwealth biologists studying lesser snow geese on Wrangel Island suggest that the population that summers there is declining, especially the cohort that winters in California. Special goose surveys and regular winter waterfowl surveys indicate that the "white" goose population wintering in California shows no trend; however, because its Ross's goose component is increasing, the lesser snow goose component must be decreasing. Populations of both Wrangel Island and Western Canadian Arctic lesser snow geese that winter in Pacific Flyway States and elsewhere may be declining. Frameworks affecting the hunting of lesser snow geese in the Pacific Flyway may be changed pending a review of information and recommendations from the Pacific Flyway Council.

8. *Tundra Swan.* (No change) In Alaska, Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Participating States must obtain harvest and hunter-participation data. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the *Atlantic Flyway.*

—The season will be experimental.

—The season may be 90 days and must occur during the white goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the *Central Flyway.*

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 1,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

In the *Pacific Flyway.*

—A 93-day season may be selected between the Saturday closest to October 1 (October 3, 1992), and the Sunday closest to January 20 (January 17, 1993). Seasons may be split into 2 segments.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, and Pershing Counties.In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

9. *Sandhill cranes.*

A. *Central Flyway*—Regular seasons (Possible change) Pending evaluation of the most recent harvest and population data, sandhill crane hunting seasons may be selected within specified areas in Colorado, Kansas, Montana, North Dakota, South Dakota, Wyoming, New Mexico, Oklahoma, and Texas outside the range of the Rocky Mountain Population of sandhill cranes. Daily bag limits may not exceed 3 sandhill cranes with no substantial changes in dates from the 1991–92 seasons. The requirement for a Federal sandhill crane hunting permit is continued in all of the above areas.

In the August 21, 1991, **Federal Register** (56 FR 41608), the Service stated that the 1990–91 harvest of mid-continent sandhill cranes exceeded the guidelines in the management plan. The Flyway Council was asked to take action to ensure that harvest levels comply with the current management plan. The Service stated that if sufficient action was not taken, the Service would propose measures to ensure that future harvests are in compliance with the management plan. The Service recognized that the existing management plan, approved in 1981, has served as a useful guide in regulating harvest, but indicated that it may require updating. The Service is encouraged by the initiation of efforts to revise the management plan and incorporate the most current population, recruitment, mortality, and harvest information available. The Service supports this effort in anticipation of a completed revision prior to setting the 1992–1993 season.

B. *Central and Pacific Flyways*—Special seasons (No change) Pending evaluation of the most recent harvest and population data, sandhill crane hunting seasons within the range of the Rocky Mountain Population may be selected by Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming subject to the following conditions:

—Outside dates are September 1, 1992 - January 31, 1993.

—Season(s) in any State or zone may not exceed 30 days.

—Daily bag limits may not exceed 3, and season limits may not exceed 9.

—Participants must have in their possession, while hunting, a valid permit issued by the appropriate State.

—Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons will be consistent with the management plan and approved by the Central and Pacific Flyway Councils.

—All hunts, except those in Arizona, Wyoming, and the Middle Rio Grande Valley of New Mexico, will be experimental.

10. *Coots.* (No change) States in the Atlantic, Mississippi, and Central Flyways may select daily bag limits not to exceed 15 coots, concurrent with the regular duck season; while States in the Pacific Flyway may select daily bag and possession limits not exceeding 25 coots and moorhens, singly or in the aggregate, between the first opening date of the duck season and the last closing date of the duck season, but the season length may not exceed 93 days.

11. *Common Moorhens and Purple Gallinules.* (No change) States in the Atlantic, Mississippi, and Central Flyways may select hunting seasons of not more than 70 days between September 1, 1992, and January 20, 1993. Any State may split its moorhen/gallinule season into two segments without penalty. Daily bag limits may not exceed 15 common moorhens and purple gallinules, singly or in the aggregate.

States in the Pacific Flyway must select their moorhen/gallinule hunting seasons to occur between the first opening date of the duck season and the last closing date of the duck season, but the season length may not exceed 93

days. Daily bag and possession limits may not exceed 25 coots and moorhens, singly or in the aggregate.

12. *Rails.* (No change) The States included herein may select seasons between September 1, 1992, and January 20, 1993, on clapper, king, sora, and Virginia rails as follows:

The season length for all species of rails may not exceed 70 days, and any State may split its rail season into two segments without penalty.

A. *Clapper and king rails.*

In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, the daily bag limits may not exceed 10 clapper and king rails, singly or in the aggregate. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, the daily bag limits may not exceed 15 clapper and king rails, singly or in the aggregate. The season will remain closed on clapper and king rails in all other States.

B. *Sora and Virginia rails.*

In addition to the prescribed limits for clapper and king rails, daily bag and possession limits not exceeding 25 sora and Virginia rails, singly or in the aggregate, may be selected in States in the Atlantic, Mississippi, and Central Flyways, and the Pacific Flyway portions of Colorado, Montana, New Mexico, and Wyoming. No hunting season is proposed for rails in the remainder of the Pacific Flyway.

13. *Common snipe.* (No change) States may select hunting seasons between September 1, 1992, and February 28, 1993, not to exceed 107 days. In Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31. Any State may split its snipe season into two segments. Daily bag limits may not exceed 8 snipe.

14. *Woodcock.* (No change) States in the Central and Mississippi Flyways may select hunting seasons of not more than 65 days with a daily bag limit of 5 woodcock, to occur between September 1, 1992 and January 31, 1993. States may split their woodcock season without penalty.

States in the Atlantic Flyway may select hunting seasons of not more than 45 days with a daily bag limit of 3 woodcock, to occur between October 1, 1992, and January 31, 1993. States may split their woodcock season without penalty. New Jersey may select seasons by North and South Zones. The season in each zone may not exceed 35 days.

15. *Band-tailed pigeons.* (No change)

A. Pacific Coast States (California, Oregon, Washington, and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral, and Storey). These States may select hunting seasons not to exceed 16 consecutive days between September 15, 1992, and the Sunday closest to January 1 (January 3, 1993). The daily bag and possession limits may not exceed 2 band-tailed pigeons. California may select hunting seasons of 16 consecutive days for each zone. The season in the north zone of California must close by October 7.

B. Four-Corners States (Arizona, Colorado, New Mexico, and Utah). These States may select hunting seasons not to exceed 30 consecutive days between September 1 and November 30, 1992. Daily bag limits may not exceed 5 band-tailed pigeons. The season shall be open only in the areas delineated by the respective States in their hunting regulations. New Mexico may select hunting seasons not to exceed 20 consecutive days between September 1 and November 30, 1992, in the North Zone, and October 1 and November 30, 1992, in the South Zone.

16. *Mourning doves.* (No change) Pending results of the call-count survey and receipt of additional information and recommendations, the Service proposes the following frameworks during the 1992–1993 hunting season. Outside framework dates will be September 1, 1992, and January 15, 1993, except as otherwise provided.

States in the Eastern (EMU) and Central (CMU) Management Units are offered an option of a season length of 70 days with a daily bag limit of 12 birds, or a season length of 60 days with a daily bag limit of 15 birds. EMU and CMU States may select hunting seasons by zone without penalty and split the season into not more than 3 segments. The hunting seasons in the South zones of Alabama, Georgia, Louisiana, Mississippi, and Texas, may commence no earlier than September 20, 1992. Seasons in Texas may not extend beyond January 25, 1993.

In the Western Management Unit (WMU), seasons in Idaho, Nevada, Oregon, Utah, and Washington may not exceed 30 consecutive days between September 1, 1992, and January 15, 1993; and seasons in Arizona and California may not exceed 60 days to be split between 2 periods, September 1—15, 1992, and November 1, 1992—January 15, 1993. The daily bag limit in the WMU may not exceed 10 birds.

17. *White-winged and white-tipped doves.* (No change) Arizona, California, Florida, Nevada, New Mexico, and Texas may select hunting seasons between September 1 and December 31, 1992, except as otherwise provided. Daily bag limits and season lengths are stipulated below:

A. Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The aggregate daily bag limit may not exceed 10 white-winged and mourning doves, no more than 6 of which may be white-winged doves.

B. Nevada, in the counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino. Daily bag limits may not exceed 10 white-winged and mourning doves, singly or in the aggregate. The season must be concurrent with the mourning dove season.

C. New Mexico may select a hunting season with daily bag limits not to exceed 12 (15 under the alternative) white-winged and mourning doves, singly or in the aggregate. Dates, limits, and hours are to conform with those for mourning doves.

D. Texas may select a hunting season of not more than 70 (60 under the alternative) days to be held between September 1, 1992 (September 20, 1992, in South Zone), and January 25, 1993, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged and 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the aggregate daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 2 consecutive days for the special white-winged dove areas of the South Zone. In that portion of the special area north and west of Del Rio, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. In that portion of the special area south and east of Del Rio, the experimental daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. The experimental daily bag limits are dependent on annual review of the special white-winged dove season. The Service remains concerned about the status of white-winged doves in this portion of Texas and, pending 1992 breeding population information, may consider modification of this season and other alternative actions.

E. Florida may select a white-winged dove season of not more than 70 (60 under the alternative) days to be held between September 1, 1992, and January 15, 1993, and coinciding with the mourning dove season. The aggregate daily bag limit may not exceed 12 (15 under the alternative) white-winged and mourning doves, no more than 4 of which may be white-winged doves.

18. *Migratory bird hunting seasons in Alaska.* (No change)

Outside Dates: Between September 1, 1992, and January 26, 1993.

Hunting Seasons: Not more than 107 consecutive days for waterfowl, sandhill cranes, and snipe in each zone. The seasons in each zone must be concurrent. The season may be split without penalty in the Kodiak Zone.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. Throughout the State, there is no open hunting season for Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Stellar's eiders.

Daily Bag and Possession Limits:

Ducks—Except as noted, a basic daily bag limit of not more than 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. These basic limits may not include more than 2 pintails daily and 6 in possession, and 2 canvasback daily and 6 in possession. In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate. The season is closed for Stellers' and spectacled eiders.

Geese—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra swan—No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan. Permits will be valid in Game Management Unit 22. The season must be concurrent with other migratory bird seasons. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1, 1993.

19. *Hawaii mourning doves.* (No change) The mourning dove, an introduced species in Hawaii, is the only migratory game bird occurring in Hawaii in numbers to permit hunting. It is proposed that mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, as has been done in the past, and subject to the applicable provisions of Part 20 of Title 50 CFR. Such a season must be within the constraints of applicable migratory bird treaties and annual regulatory frameworks. These constraints provide that the season must be within the period of September 1, 1992, and January 15, 1993; the length may not exceed 70 (60 under the alternative) days; and the daily bag limits may not exceed 12 (15 under the alternative) doves. Other applicable Federal regulations relating to migratory game birds shall also apply.

20. *Puerto Rico.* (No change)

DOVES AND PIGEONS

Outside Dates: Between September 1, 1992, and January 15, 1993.Hunting Seasons: Not more than 60 days for Zenaida, mourning, and white-winged doves, and scaly-naped pigeons.

Daily Bag and Possession Limits: Not to exceed 10 doves of the species named herein, singly or in the aggregate, and not to exceed 5 scaly-naped pigeons.

Closed Areas: No open season for doves and pigeons is prescribed in the areas described as closed in the August 21, 1991, **Federal Register** (56 FR 41608).

DUCKS, COOTS, MOORHENS, GALLINULES, AND SNIPE

Outside Dates: Between October 1, 1992, and January 31, 1993.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into 2 segments.

Daily Bag Limits:

Ducks - Not to exceed 3.

Common Moorhens - Not to exceed 6.

Common snipe - Not to exceed 6.

Closures: The season is closed on the ruddy duck *(Oxyura jamaicensis);* the White-cheeked pintail *(Anas bahamensis);* West Indian whistling (tree) duck *(Dendrocygna arborea);* fulvous whistling (tree) duck *(Dendrocygna bicolor),* and the masked duck *(Oxyura dominica),* which are protected by the Commonwealth of Puerto Rico. Also, the season is closed on purple gallinules *(Porphyrula martinica),* Common coot *(Fulica americana),* and Caribbean coot *(Fulica carabaea).*

Closed Areas: There is no open season for ducks, common moorhens, or snipe in the Municipality of Culebra and on Desecheo Island.

21. *Virgin Islands.* (No change)

DOVES AND PIGEONS

Outside Dates: Between September 1, 1992, and January 15, 1993.

Hunting Seasons: Not more than 60 days for Zenaida doves and scaly-naped pigeons throughout the Virgin Islands.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves and 5 scaly-naped pigeons.

Closed Seasons: No open season is prescribed for common ground-doves or quail doves, or other pigeons in the Virgin Islands.

Local Names for Certain Birds.

Zenaida dove *(Zenaida aurita)*—mountain dove.

Bridled quail dove *(Geotrygon mystacea)*—Barbary dove, partridge (protected).

Common Ground-dove *(Columbina passerina)*—stone dove, tobacco dove, rola, tortolita (protected).

Scaly-naped pigeon *(Columba squamose)*—red-necked pigeon, scaled pigeon.

DUCKS

Outside Dates: Between December 1, 1992, and January 31, 1993, the Virgin Islands may select a duck hunting season as follows:

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag Limits: Not to exceed 3.

Closures: The season is closed on the ruddy duck *(Oxyura jamaicensis);* White-cheeked pintail *(Anas bahamensis);* West Indian whistling (tree) duck *(Dendrocygna arborea);* fulvous whistling (tree) duck *(Dendrocygna bicolor),* and the masked duck *(Oxyura dominica).*

22. *Migratory game bird seasons for falconers.* (No change)

Proposed Special Falconry Frameworks

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR Part 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length for the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1992 and March 10, 1993.

Daily Bag and Possession Limits: Falconry daily bag and possession limits

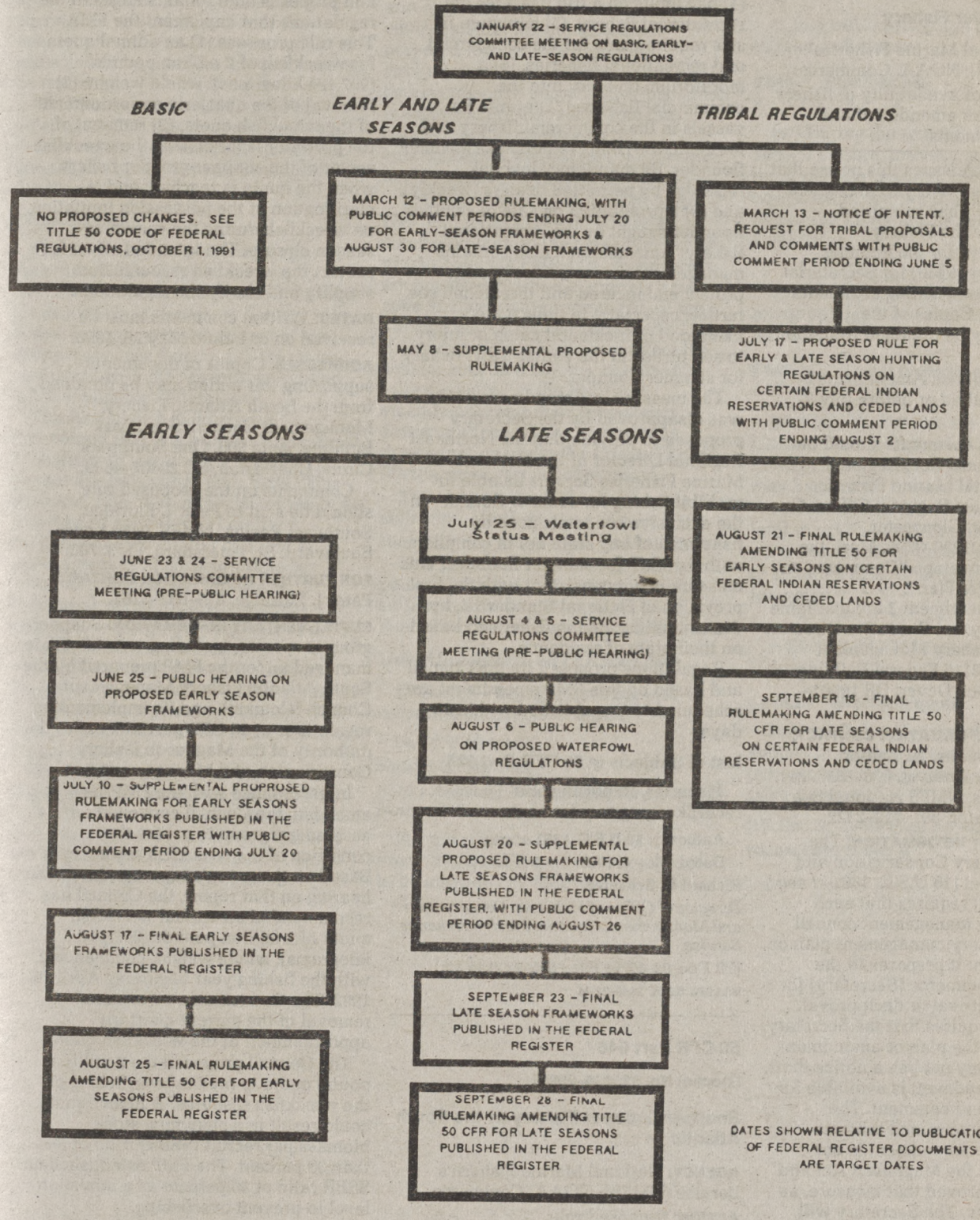
for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including season dates and hunting hours, apply to falconry in each State listed in 50 CFR Part 21.29(k).

Regular season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

BILLING CODE 4310-55-F

1992 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



[FR Doc. 92–10740 Filed 5–7–92; 8:45 am]
BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

Summer Flounder Fishery

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Notice of availability of fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) for Secretarial approval and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATES: Comments on Amendment 2 must be received on or before July 3, 1992.

ADDRESSES: All comments should be sent to Mr. Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, Massachusetts 01930–3799. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of Amendment 2 are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19901–6790.

FOR FURTHER INFORMATION CONTACT: Richard G. Seamans, Jr., Senior Resource Policy Analyst, 508–281–9244, or Phil Williams, NMFS National Sea Turtle Coordinator, 301–713–2322.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary has determined that one provision of the amendment is not consistent with the Magnuson Act and thus has disapproved that measure, as explained below. The Secretary will consider the public comments in determining whether to approve the remaining provisions of the amendment.

The proposed amendment provides: (1) Annual quotas for the commercial fishery allocated on a state by state basis, (2) minimum mesh size for trawl gear, (3) an adjustable seasonal restriction for the recreational fishery, (4) bag limits on a trip basis for the recreational fishery, (5) minimum fish size requirements for the commercial and recreational fisheries, (6) a moratorium on entry into the commercial fishery, (7) permits for vessels in the commercial fishery and for dealers wishing to purchase summer flounder, (8) mandatory logbook reporting by permitted dealers (weekly), and (9) a prohibition on sale of summer flounder caught by the recreational fishery. Amendment 2 also contains management measures designed to protect endangered and threatened sea turtles, especially to reduce the likelihood of incidental catch or injury to sea turtles in the winter trawl fishery for summer flounder.

The measure in Amendment 2 which was disapproved by the Secretary proposed to provide that the Northeast Regional Director of the National Marine Fisheries Service be able to prohibit fishing for summer flounder in the exclusive economic zone by fishermen of any state not in compliance with the FMP for summer flounder. This measure is not consistent with the first provision of National Standard 4, by discriminating among fishermen based on their state of residence.

Regulations proposed by the Council and based on this FMP amendment are scheduled to be published within 15 days.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 4, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–10763 Filed 5–5–92; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 646

[Docket No. 920496–2096]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a preliminary notice of change in the quota for wreckfish in the snapper-grouper fishery off the South Atlantic states in accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), as amended, and proposes additional changes to the regulations that implement the FMP. This rule proposes (1) an annual quota for wreckfish of 2 million pounds (907,194 kilograms), whole weight; (2) removal of the quarterly apportionment of the wreckfish quota; (3) removal of the procedures for closing the wreckfish sector of the snapper-grouper fishery when the quota is reached; and (4) clarification of the possession limitation on wreckfish during the spawning-season closure. The intended effect is to protect the wreckfish resource and simplify and clarify the regulations.

DATES: Written comments must be received on or before May 26, 1992.

ADDRESSES: Copies of documents supporting this action may be obtained from the South Atlantic Fishery Management Council, Southpark Building, suite 306, One Southpark Circle, Charleston, SC 29407–4699.

Comments on the proposed rule should be sent to Peter J. Eldridge, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species, including wreckfish, are managed under the FMP prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act.

In accordance with the FMP, as amended, the Council convened an assessment group to assess the condition of the wreckfish resource. Based on the group's report and a public hearing on that report, the Council has recommended an annual wreckfish quota of 2 million pounds (907,194 kilograms), whole weight, commencing with the fishing year beginning April 16, 1992. The Council also recommended removal of the current quarterly apportionment of the wreckfish quota.

The Council proposed the 2-million-pound quota to prevent overfishing of the wreckfish resource. A higher quota could result in a spawning stock biomass per recruit (SSBR) ratio of less than 30 percent. The FMP established an SSBR ratio of 30 percent as a minimum level to prevent overfishing.

The procedures and controls of the recently implemented limited entry program for the wreckfish sector of the

snapper-grouper fishery (57 FR 7886, March 5, 1992), obviate the need for a quarterly apportionment of the wreckfish quota and ensure that the annual quota for wreckfish will not be exceeded. Accordingly, the quarterly apportionment and the procedures for closing the wreckfish sector of the fishery when the quota is reached, or is projected to be reached, are proposed to be removed.

NMFS also proposes to revise the existing 50 CFR 646.21(g) to clarify that the harvest or possession limitation on wreckfish applies to persons aboard a fishing vessel.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this proposed rule is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable Federal law.

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, 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 a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed wreckfish quota does not constitute a change in the amount of wreckfish that were allowed to be harvested in the current fishing year.

This proposed rule does not change any of the factors considered in the environmental impact statement prepared for the FMP or in the environmental assessments prepared for its amendments; accordingly, this action is categorically excluded from the requirement to prepare an environmental assessment, as specified in NOAA Administrative Order 216–6.

In the final rules implementing the FMP and its amendments, NMFS concluded that, to the maximum extent practicable, the FMP and amendments are consistent with the approved coastal zone management programs of all the affected states. Since this proposed rule, if adopted, does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and amendments and their consistency determinations, a new consistency determination under the Coastal Zone Management Act is not required.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 4, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is proposed to be amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

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

2. In § 646.7, paragraph (w) is revised to read as follows:

§ 646.7 Prohibitions.

* * * * *

(w) During the wreckfish spawning-season closure, harvest, possess, off-load, sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing, as specified in § 646.21(g).

* * * * *

3. In § 646.21, the first sentence of paragraph (g) is revised to read as follows:

§ 646.21 Harvest limitations.

* * * * *

(g) *Wreckfish spawning-season closure.* During the period January 15 through April 15, each year, no person may harvest or possess aboard a fishing vessel wreckfish in or from the EEZ; off-load wreckfish from the EEZ; sell, purchase, trade, or barter wreckfish in or from the EEZ; or attempt any of the foregoing. * * *

* * * * *

4. Section 646.24 is revised to read as follows:

§ 646.24 Wreckfish quota.

Persons fishing for wreckfish are subject to a quota of 2 million pounds (907,194 kilograms), whole weight, each fishing year.

[FR Doc. 92–10838 Filed 5–7–92; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 57, No. 90
Friday, May 8, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Privacy Act of 1974; New System of Records

AGENCY: Administrative Conference of the United States.

ACTION: Notification of establishment of a Privacy Act system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the Administrative Conference of the United States (the "Administrative Conference") publishes this notice of its establishment of a system of records entitled "Dispute Resolution Neutrals Data File," which was authorized by Congress in the Administrative Dispute Resolution Act of 1990 (the "ADR Act") and the Negotiated Rulemaking Act of 1990 (the "Reg-Neg Act"). The Dispute Resolution Neutrals Data File is established to: (1) Maintain information regarding individuals with experience in dispute resolution and negotiated rulemaking; (2) provide the capability to respond to federal agencies' inquiries for names of individuals who are available to act as dispute resolution neutrals, as defined by the ADR Act, or as conveners and facilitators, as defined by the Reg-Neg Act. The Conference will furnish names and qualifications of individuals contained in the Dispute Resolution Neutrals Data File to federal agencies and to private parties with federal agency disputes, upon request.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah Laufer, Attorney-Advisor, Administrative Conference of the U.S., 2120 L Street, NW., suite 500, Washington, DC 20037, Phone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: In accordance with the Administrative Dispute Resolution Act (Pub. L. 101–552) (the "ADR Act"), the Administrative Conference has established a Roster of Neutrals ("Roster") to assist agencies in alternative dispute resolution. As defined in the ADR Act, a neutral is an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. The Roster also identifies individuals who wish to act as conveners and facilitators as defined and provided for in the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648) (the "Reg-Neg Act").

The Administrative Conference has established a new system of records pursuant to the Privacy Act, entitled the "Dispute Resolution Neutrals Data File," which incorporates the Administrative Conference's Roster of Neutrals. This system of records will be maintained solely by the Office of the Chairman of the Administrative Conference and will remain separate from other Administrative Conference records. This system will consist of registration materials and records of individuals interested in resolving federal agency disputes. The new system of records will enable the Administrative Conference to carry out its statutory obligation to assist federal agencies in dispute resolution under the ADR Act, and negotiated rulemaking under the Reg-Neg Act.

The new data file system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Office of Management and Budget, pursuant to paragraph 4b of appendix I of OMB Circular A–130, "Federal Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, dated December 24, 1985).

SYSTEM NAME:

Dispute Resolution Neutrals Data File.

SYSTEM LOCATION:

Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Neutrals listed on the Administrative Conference's roster of persons available to assist in resolving federal agency disputes and negotiated rulemaking.

CATEGORIES OF RECORDS IN THE SYSTEM:

The first category of records consists of current neutral files (those currently on the Roster), and contains the personal data questionnaire listing education, professional background and experience, and confidential and other recommendations as to acceptability. In addition, these files include correspondence with neutrals regarding fees, areas of professional interest, complaints alleging serious legal or ehtical breaches, if any, other correspondence and data related to case handing, and biographical sketches summarizing information contained in the personal data questionnaire. The second category of records consists of registration records (see above) for individuals who have not been accepted or have been removed from the Roster, correspondence, and the reason for removal from the Roster.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Administrative Dispute Resolution Act (Pub. L. 101–552) and the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648).

PURPOSE(S):

The purposes of the Dispute Resolution Neutrals Data File are to (1) maintain information regarding individuals with experience in dispute resolution and negotiated rulemaking; (2) provide the capability to respond to federal agencies' inquiries for names of individuals who are available to act as dispute resolution neutrals, as defined by the ADR Act, or as conveners and facilitators, as defined by the Reg-Neg Act. The Conference will furnish names and qualifications of individuals contained in the Dispute Resolution Neutrals Data File to federal agencies and to private parties with federal agency disputes, upon request.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Biographical data are furnished to federal agencies, and private parties involved in federal agency disputes, who have requested the referral of one or more neutrals, conveners or facilitators along with other data submitted by the individual with the registration form.

The files may also be furnished to persons conducting research on dispute resolution or negotiated rulemaking processes in the Federal Government.

Information furnished to the Administrative Conference by individuals wishing to be included in the Data File, and from other sources listed above, may be routinely disclosed to appropriate persons or organizations outside the agency in the course of verifying the accuracy of data submitted. Data furnished by any source in the nature of a complaint alleging serious legal or ethical breaches are routinely referred to appropriate persons outside the agency in the course of considering an individual's continuing eligibility for listing on the Data File and, if a serious breach is identified, to relevant legal or other authorities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

These records are maintained in original/duplicate document form in lateral file cabinets and on computer. In either case, the files are retrieved by an individual name or identification number or other computer search techniques.

SAFEGUARDS:

These records are located at the Office of the Chairman of the Administrative Conference. The records are maintained in lateral file cabinets to which access is limited during office hours. Computer records can be accessed only through use of confidential procedures and passwords. Access to either files or computer records is limited to employees of the Office of the Chairman of the Administrative Conference.

RETENTION AND DISPOSAL:

Files on individuals are maintained as long as the individual is listed on the Roster. Files of individuals who have not been accepted for the Roster due to incomplete or improperly submitted applications, are maintained for six months. After the six-month period only names and addresses of these persons will be retained. Other materials submitted will be discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037.

NOTIFICATION PROCEDURE:

Individuals who want to receive notification of inclusion in this system of records, inspect their file, or contest the contents of any records maintained in the system, should address inquires to the Executive Director of the Administrative Conference at the above address. All such inquiries should indicate the name of the individual and any other information that may be helpful in locating the file.

RECORDS ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURE:

Contact the Executive Director at the above address, and identify the record, specify the information being contested, and the corrective action sought with supporting justification.

RECORD SOURCE CATEGORIES:

Directly from the individual, sources furnished by the individual, or obtained by the Administration Conference from other sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In order to preserve the accuracy of information necessary for investigating data supplied by individuals wishing to be included on the Roster, and to investigate complaints of ethical breaches, the identity of confidential sources is exempted from disclosure.

Dated: May 1, 1992.

William J. Olmstead,

Executive Director.

[FR Doc. 92–10659 Filed 5–7–92; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Salmon National Forest, Salmon, ID

AGENCY: USDA-Forest Service.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Salmon National Forest published a notice of intent to prepare an environmental impact statement for the proposed Sunshine Timber Sale in the **Federal Register** on March 28, 1991 (Vol. 56. No. 60, pages 12883 and 12884). That notice is hereby revised to change the projected timeframe for completion of the Draft and Final EIS. The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review on November 1, 1992. At that time the EPA will publish an availability notice of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the availability notice in the **Federal Register.**

The final EIS is expected to be released May 1, 1993. The Forest Supervisor for the Salmon National Forest, who is the responsible official for the EIS, will then make a decision regrading this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reasons for the decision will be documented in a Record of Decision.

The original dates for filing of the Draft EIS and release of the Final EIS were March 1992 and August 1, 1992, respectively. The revised dates are due to the decision to contract the preparation of the EIS, rather than complete the analysis with Forest Service personnel. No other revisions are made.

An open house meeting will be held for the purpose of identifying issues. This meeting will occur on May 19, 1992 from 6 p.m. to 9 p.m. at the Salmon Valley Center, 200 Main Street, Salmon, Idaho. Notification of this meeting will be published in The Recorder-Herald (Salmon, ID) and sent to all individuals who commented on the notice of intent.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Russ Bjorklund, Cobalt Ranger District, P.O. Box 729, Salmon, ID 83467; telephone (208) 756–2240.

John E. Burns,

Forest Supervisor.

[FR Doc. 92–10860 Filed 5–7–92; 8:45 am]

BILLING CODE 3410–11–M

Ushk Bay Timber Offerings (FY 93) Tongass National Forest, Chatham Area, Sitka, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental impacts of proposed actions to build about 25 to 30 miles of road; harvest about 2,600 to 3,000 acres of timber and regenerate new stands of trees; and construct one or more Log Transfer Facilities in Ushk Bay, Poison Cove and/or Deep Bay areas of Chichagof Island. This level of development would result in approximately 70 Million Board Feet (MMBF) of sawlog volume and 19 MMBF of utility volume for a total of 89 MMBF to support local mills. The project area is located approximately 40 air miles north of Sitka, Alaska, and adjoins the West Chichagof—Yakobi wilderness. The proposed actions are located within

Value Comparison Units (VCUs) 279, 280, and 281 as designated in the Tongass Land Management Plan.

DATES: Written comments concerning the scope of the analysis should be received by June 22, 1992.

ADDRESSES: Send written comments to Ushk Bay Planning team, Chatham Area Supervisor Office, 204 Siginaka Way, Sitka, Alaska 99835.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be directed to Janis Burns, Interdisciplinary Team Leader, Chatham Area Supervisors Office, phone (907) 747–4200.

SUPPLEMENTARY INFORMATION: This EIS will tier to the Forest Plan and the EIS and Environmental Assessment prepared for the Plan, as amended (Tongass Land Management Plan, or "TLMP"). The TLMP provides the overall guidance (Goals, Objectives, Standards, and Management Area direction) to achieve the desired future condition for the area in which the project is proposed. The potentially affected area includes all of Management Area C 29 and one VCU in Management Area C 40 as described in the TLMP on pages 73 and 74.

The purpose and need for the proposed action is to make timber volume available from the Ushk Bay area to meet requirements of the Alaska Pulp Corporation 50-year Timber Sale Contract. This EIS may result in one or more timber offerings.

The nature of the decision to be made is the amount of timber and the design of any offerings to provide from the Ushk Bay area, beginning as soon as Fiscal Year 1994, to contribute to the contractual commitment. Michael A. Barton, Regional Forester, Alaska Region, will decide, consistent with meeting resource protection standards and guidelines in the Tongass Land Management Plan: (a) How much volume to make available; (b) the location and design of the arterial and collector road system needed to develop the Ushk Bay area; (c) the location and design of timber harvest units; (d) mitigation and monitoring measures for sound resource management, and (e) whether there may be a significant restriction on subsistence uses, and if so, other determinations required by section 810 of the Alaska National Interest Lands Conservation Act.

The proposed actions will occur primarily in VCUs 279, 280 and 281. TLMP approved Management Activities for these management areas include: Management Area C 39: (VCUs 280 and 281).

This management area is part of the Alaska Pulp Corporation contract area.

—Road construction in VCUs 280, 281 and pre-road 3 miles in Deep Bay.
—Timber sale preparation in VCUs 280, 281 for 1986–90 period and also the 1991–95 period.
—Recreation Facility near Ushk Lake in VCU 281.
—Reforestation in VCUs 280, and 281.
—Timber stand improvement in VCUs 280, and 281.

Management Area C 40: (VCU 279).

This management area is part of the Alaska Pulp Corporation contract area.

—Timber sale preparation in VCU 279 for 1986–90 period and also the 1991–95 period.

These three VCUs were analyzed in the Final EIS for the 1986–90 Operating Period for the Alaska Pulp Corporation Long-term Sale Area. From that analysis, in combination with public response to recent scoping for similar timber harvest projects, the following tentative issues have been identified for the proposed action:

- Maintain water quality and fish habitat;
- Availability of subsistence resources;
- Wildlife habitat for game and non-game wildlife species;
- Scenic quality and "recreation experience" as experienced along the Alaska Marine Highway travel way;
- Marketable timber offerings; and
- Location and design of Log Transfer Facilities needed to transfer timber from uplands to saltwater.

The Forest Service is seeking information and comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. For most effective use, comments should be submitted to the Forest Service within 45 days from the date of publication of this notice in the **Federal Register**.

Preparation of the EIS will include the following steps.

1. Public notification and scoping.
2. Separation of issues of minor importance or those that have been covered by previous and relevant environmental analysis, from those directly affecting the decision to be made.
3. Identification of issues to be analyzed in depth.
4. Development and analysis of reasonable alternatives to the proposed action.
5. Identification of the potential environmental effects of the alternatives.

For step 1, a scoping newsletter will be mailed to interested persons on the Forest Service mailing list. This newsletter will briefly explain the timing and location of the proposed project and request a response from the receiver. It will also contain specific information about the location and timing of public involvement meetings scheduled. Scoping meetings will be held in Sitka, Alaska the evening of May 18, 1992. A second scoping meeting is tentatively set for Angoon, Alaska on May 19th, pending confirmation of community interest in the Ushk Bay project area. Exact locations and timing of the scoping meetings will be announced in local newspapers and radio station public service announcements.

Step 4 will consider a range of alternatives developed from the key issues. One of these will be the "No Action" alternative, in which there is no harvest. Other alternatives will consider various levels and locations of harvest and regeneration in response to issues and non-timber objectives.

Step 5 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site specific mitigation measures for each alternative will be identified and their effectiveness evaluated after implementation.

The proposed management activities would be administered by the Sitka Ranger District of the Chatham Area, Tongass National Forest in Sitka, Alaska.

Agencies and other interested persons or groups are invited to visit with Forest Service officials at any time during the process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process (the next 45 days) and, (2) during the formal review period of the Draft EIS.

The projected date for filing the Draft EIS with the Environmental Protection Agency (EPA) is January 1993. The comment period on the Draft EIS 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 alert reviewers about

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 so that it 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. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is 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 EIS should be as specific as possible. Referencing to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS 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, 40 CFR 1503.3, in addressing these points.).

The final EIS is expected to be released September 24, 1993. The Regional Forester for the Tongass National Forest who is the responsible official for the EIS will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in a Record of Decision.

Dated: April 30, 1992.

M.E. Chelstad,

Acting Regional Forester.

[FR Doc. 92-10757 Filed 5-7-92; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.)*

	Facility No., name, and location of stockyard	Date of posting
AR-167.....	Dunn's Horse and Tack Sale, El Dorado, Arkansas.	Feb. 19, 1992.
MO-273....	Sarcoxie Livestock Auction, Inc., Sarcoxie, Missouri.	Apr. 10, 1992.
WV-119....	Moundsville Livestock Auction Co., Inc., Moundsville, West Virginia.	Dec. 18, 1991.

Done at Washington, DC this 1st day of May, 1992.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 92-10741 Filed 5-7-92; 8:45 am]

BILLING CODE 3410-20-M

Deposting of Stockyards

Notice is hereby given that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.D. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore no longer subject to the provisions of the Act.

	Facility No., name, and location of stockyard	Dat of posting
LA-108...	Farmer and Stockman Auction, Inc., Clarence, Louisiana.	Apr. 11, 1957.
MS-100..	Batesville Livestock Commission Company, Batesville, Mississippi.	Jan. 13, 1959.
OH-121..	The Gallipolis Stockyards Company, Gallipolis, Ohio.	June 16, 1959.

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register.**

Done at Washington, DC this 1st day of May.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 92-10742 Filed 5-7-92; 8:45 am]

BILLING CODE 3410-KD-M

Rural Electrification Administration

East Kentucky Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of transmission facilities and two substations in Bullitt and Shelby Counties, Kentucky, by East Kentucky Power Cooperative, Inc. (EKPC).

FOR FURTHER INFORMATION CONTACT: REA'S FONSI AND EKPC'S Borrower's Environmental Report (BER), may be reviewed at and copies obtained from the office of the Director, Northern Regional Division, REA, room 0243, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1420, or at the office of Robert E. Hughes, Jr., EKPC, P.O. Box 707, Winchester, Kentucky 40372-0707, telephone (606) 744-4812, during regular business hours. Questions or comments on the proposed project should be sent to the REA contact.

SUPPLEMENTARY INFORMATION: REA has reviewed the BER submitted by EKPC and has determined that it represents an

accurate assessment of the scope and level of environmental impacts of the proposed project. The BER, which includes input from certain state and Federal agencies, has been adopted by REA to serve as its Environmental Assessment (EA).

The proposed construction project consists of the construction of a 31.3 mile 161 kilovolt (kV) transmission line between the proposed Bullitt and Shelby Substations and a 1.1 mile 69 kV transmission line extending from the proposed Shelby Substation to the existing Bekaert Substation in Bullitt and Shelby Counties. Approximately 4.8 miles of the 161 kV line will be double circuit while the remaining portion will be single circuit. Each line will require 100 foot ROWs. Approximately 47 percent of the 161 kV line is located on existing transmission line ROW easements. The electric conductors for the 161 kV line will be suspended on H-frame and single pole structures. For the 69 kV line, electric conductors will be suspended on single wood pole structures ranging from 50 to 80 feet in height.

The proposed site for the Bullitt County Transmission Substation is on the northern side of State Route 480 approximately 1 mile east of the intersection of State Routes 480 and 1604. The proposed site for the Shelby County Transmission Substation is on the southern side of Brunerstown Road approximately 4,000 feet west of the Interstate Highway 64 Interchange and State Route 55. Both proposed substation sites are located immediately adjacent to already existing electric distribution substations and will disturb approximately 2 acres of land each.

Alternatives examined for the proposed project included no action, energy conservation, construction of lower voltage facilities, alternative transmission line routes, and alternative substation sites. Upgrading of existing electrical facilities was not considered by EKPC to be economically feasible. REA has determined that the proposed project is an environmentally acceptable alternative that meets EKPC's need with a minimum of adverse environmental impact.

REA has concluded that the proposed project will not significantly effect air quality, water quality, floodplains, wetlands, important farmland or the health of humans and animals. The proposed project will have no effect on Federally listed or proposed threatened and endangered species or critical habitat. EKPC performed a botanical survey of the project area and discovered a few populations of three state rare plant species in the Bullitt to Shelby Transmission Line project area. To mitigate impacts, EKPC will span the areas containing these plants thereby keeping vegetation disturbance at a minimum and will comply with Kentucky State Nature Preserves Commission's recommendations for preserving these plants. The proposed project will not affect historic properties listed or eligible for listing in the National Register of Historic Places. At Kentucky Heritage Council's request EKPC conducted a Phase I Archaeological Survey on the proposed site for the Bullitt County Substation and uncovered no significant archaeological artifacts. No other issues of environmental concern have come to REA's attention.

In accordance with REA Environmental Policies and Procedures 7 CFR part 1794, EKPC published both a legal notice and an advertisement in Spencer Magnet on January 29, the Sentinel-News on January 29 and February 5, 1992, and the Pioneer News on January 29 and February 3, 1992. All of these papers have a general circulation in Bullitt and Shelby Counties. The public was given 30 days to respond on the environmental impact of the project. No responses to the notice were received by EKPC or REA.

As a result of its independent evaluation, REA has concluded that project approval would not constitute a major federal action significantly affecting the quality of the human environment. Therefore, REA has made a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

Dated: April 30, 1992.

George E. Pratt,

Deputy Administrator—Program Operations.

[FR Doc. 92-10833 Filed 5-7-92; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602-039]

Canned Bartlett Pears From Australia; Determination not to Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on canned Bartlett pears from Australia because it continues to be of interest to interested parties.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: David S. Levy or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

As of March 31, 1991, the Department of Commerce (the Department) had not received a request for an administrative review of the antidumping finding on canned Bartlett pears from Australia (38 FR 7566, March 23, 1973) for four consecutive annual anniversary months. As specified by § 353.25(d)(4) of the Commerce Regulations, the Department published a notice of intent to revoke this finding in the **Federal Register** at the beginning of the fifth annual anniversary month, and served written notice of its intent on each interested party on its service list (57 FR 7367, March 2, 1992). This notice afforded interested parties the opportunity to submit written objections to the proposed revocation, and stated that the Department would proceed with revocation if no interested party filed written objections or a request for review by March 31, 1992.

Scope of Finding

Imports covered by this finding are shipments of canned Bartlett pears from Australia. Such merchandise was classifiable under item number 148.8600 of the Tariff Schedules of the United States Annotated through 1988. This merchandise is currently classifiable under item number 2008.40.00 of the HTS. The HTS item number is provided only for convenience and Customs purposes. The written description of the scope remains dispositive.

Determination Not to Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. According to § 353.25(d)(4)(iii) of the Commerce Regulations, the Secretary is authorized to reach this conclusion if, after publication of a notice of intent to revoke a finding or order in the **Federal Register**, the Department receives no written objections to the proposed revocation or requests for review of the finding in question within the time limits specified in the notice.

On March 31, 1992, we received a written objection from counsel to the

Pacific Coast Canned Pear Service, the petitioner in this case, and from the California Pear Growers, and interested party, in response to our notice of intent to revoke the antidumping finding on canned Bartlett pears from Australia. Based on these objections, the Department has concluded that the finding continues to be of interest to interested parties. Therefore, we have determined not to revoke the antidumping finding on canned Bartlett pears from Australia.

Dated: April 24, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-10846 Filed 5-7-92; 8:45 am]

BILLING CODE 3510-DS-M

[Brazil (A-351-811), France (A-427-804), Germany (A-428-811), United Kingdom (A-412-810)]

Initiation of Antidumping Duty Investigations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2613

Initiations

On April 13, 1992, we received petitions filed in proper form by Inland Steel Industries, including Inland Steel Bar Company; and the Bar, Rod & Wire Division of Bethlehem Steel Corporation. In compliance with the filing requirements of 19 CFR 353.12, petitioners allege that imports of certain hot rolled lead and bismuth carbon steel products (certain additive steel products) from Brazil, France, Germany and the United Kingdom are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that an industry in the United States is being materially injured, or is threatened with material injury, by reason of those imports.

Petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(E) of the Act, and because they have filed the petitions on behalf of the U.S. industry producing the products that are subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

United States Price and Foreign Market Value

For all four countries, petitioners based their calculation of United States Price (USP) on price quotes to U.S. customers on either a delivered or FOB port-of-entry basis. Where applicable, petitioners made deductions for U.S. trucking, U.S. truck loading, U.S. barge, U.S. wharfage, fees paid to unrelated sales agents, U.S. vessel unloading, insurance and ocean freight, U.S. duty, foreign wharfage, foreign truck unloading and foreign inland freight.

Petitioners' estimate of foreign market value (FMV) for Brazil is based on a price list and price quotes on an FOB factory basis applicable to the Brazilian home market. Because of the hyperinflation that exists in Brazil, we excluded certain price quotes because petitioners did not submit contemporaneous USP price comparisons. Petitioners made circumstance-of-sale (COS) adjustments for the difference in credit terms between the U.S. and Brazilian markets.

For France, Germany and the United Kingdom, petitioners based FMV on delivered prices to customers in each country's home market. Petitioners deducted inland freight and made a COS adjustment to account for the differences in credit terms.

We determine that the French home market price is not useable and have rejected the less than fair value (LTFV) allegation based on home market sales. However, petitioners also provided third country delivered price quotes to British and Italian customers as FMV. Petitioners deducted inland freight and made a COS adjustment to account for the differences in credit terms

All of these home market and third country prices (with the exception of Brazil, discussed below) are exclusive of value added or similar taxes. In accordance with current Department policy, petitioners calculated the amount of such current Department policy, petitioners calculated the amount of such taxes which would be applicable to sales to the United States and added the resulting amount to both the USPs and FMVs. In the case of Brazil, the rate of one such tax included in the home market price varies depending upon which Brazilian State the customer is located in. In accordance with current Department practice, petitioners deducted the amount of this tax included in the home market price and made no further adjustment

Petitioners also alleged that Usinor/Sacilor (France), Saarstahl and Thyseen (Germany) and United Engineering Steels (UES) (United Kingdom), potential respondents in these investigations, are selling certain additive steel products in their home markets (and, in the case of France, in third countries as well) at prices below their costs of production. These allegations are based on a comparison of home market and third country prices (described above) with cost of production (COP). COP was based on the COP of an efficient U.S. producer adjusted for known differences, in France, Germany and the United Kingdom. Petitioners were unable to include in their estimates of COP respondent-specific amounts for selling, general and administrative expenses (SG&A), because the potential respondents' financial statements do not separately state SG&A expenses. Instead, petitioners used the U.S. producer's actual SG&A expenses exclusive of interest expense, because they claim the foreign producers' interest expense as a percentage of cost of goods sold is *de minimis.*

Because we have rejected the French home market price reported by petitioners, we have also rejected the cost allegation with respect to Usinor/Sacilor's home market sales. However, based on the information presented, we have reason to believe or suspect that the third country sales of Usinor/Sacilor, and the home market sales of Saarstahl, Thyssen and UES are being made at less than COP. Accordingly, pursuant to section 773(b) of the Act and 19 CFR 353.51, we are initiating COP investigations for UES's, Saarstahl's and Thyssen's sales in the specific markets identified above. We will initiate a third country COP inquiry with regard to Usinor/Sacilor's sales if we determine that a third country market is the appropriate basis for Usinor/Sacilor's FMV.

In addition to providing estimated dumping margins based on price to price comparisons, petitioners have also

estimated dumping margins for the companies covered by COP allegations based on a comparison of U.S. price to constructed value (CV). Constructed value was calculated by increasing COP by 10 percent for general expenses and eight percent for profit, pursuant to section 1773(e)(1)(B) of the Act.

Based on a comparison of U.S. prices and FMVs, petitioners allege the following dumping margin percentages:

Brazil	93.81 to 101.46 (price to price).
France	0.14 to 15.45 (price to price).
	47.53 to 75.08 (price to CV).
Germany	0.55 to 11.09 (price to price).
	65.90 to 104.31 (price to CV).
United Kingdom	22.37 to 61.79 (price to price).
	42.52 to 59.03 (price to CV).

Initiation of Investigations

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioners supporting the allegations.

We have examined the petitions on certain additive steel products from Brazil, France, Germany and the United Kingdom and find that they comply with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether imports of certain additive steel products from Brazil, France, Germany and/or the United Kingdom are being, or are likely to be, sold in the United States at less than fair value. In addition, we also are initiating cost investigations of the respondents, as noted above. If our investigations proceed normally, we will make our preliminary determinations by September 21, 1992.

Scope of Investigations

The products covered by these investigations are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in these investigations are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purpose, our description of the scope of this proceeding is dispostive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determinations by ITC

The ITC will determine, by May 28, 1992, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Brazil, France, Germany and/or the United Kingdom of certain additive steel products. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-10847 Filed 5-7-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-702]

Certain Stainless Steel Butt-Weld Pipe Tube Fittings from Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administration review.

SUMMARY: In response to a request from the respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe and tube fittings ("SSPFs") from Japan. The review covers one manufacturer/exporter, Benkan Corporation ("Benkan"), formerly Nippon Benkan Kogyo, K.K., and exports of the subject merchandise to the United States during the period from March 1, 1990 through February 28, 1991. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1991, the Department of Commerce ("the Department") published a notice of "Opportunity to Request an Administrative Review" (56 FR 9936). On March 22, 1991, Benkan requested an administrative review. The Department initiated the review on April 18, 1991, (56 FR 15856), covering the period March 1, 1990 through February 28, 1991. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 ("the Act").

Scope of the Review

The products covered by this review are certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other areas.

This merchandise is currently classifiable under Harmonized Tariff Schedules ("HTS") item 7307.23.000. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

This review covers sales and entries by Benkan during the period from March 1, 1990 through February 28, 1991. Verification was conducted at Benkan in Japan the week of November 4, 1991.

Such or Similar Comparisons

For Benkan, pursuant to section 771(16) of the Act, the Department established the following criteria for

matching sales in the home and U.S. markets: Type and physical appearance, material grade, nominal size, wall thickness, and type of pipe used as raw material. For certain products identified by the respondent as identical, the Department found the weights were so disproportionate in the home and U.S. markets that the Department used weight (plus or minus ten percent) as an additional criterion. Where there were no identical products sold in the home market, the Department considered these criteria and gave particular attention to the additional criterion of weight (closest weight to the home market model match within plus or minus ten percent of the weight of the U.S. models, with preference for the higher weighted model). The Department used the plus or minus ten percent benchmark in determining similar merchandise because both Japanese and U.S. industry standards allow for such deviation in the weight.

From the sample that Benkan provided at verification, the Department found the ultra or super clean fittings sold in the home market were not identical, nor similar, to the fittings sold to the United States. The ultra or super clean fittings sold to the United States were found to be considerably less in weight, and significantly different in size, than the fittings sold in the home market. Because Benkan incorrectly claimed that these fittings were identical, and thus did not provide the Department with the proper such or similar fitting sales information as requested, the Department used best information otherwise available. Best information available for these ultra or super clean fittings is 37.24 percent, which is the rate applied to Benkan during the original investigation.

United States Price

In calculating United States price (USP) the Department used purchase price, as defined in section 772 of the Tariff Act because the merchandise was sold to an unrelated purchaser in the United States prior to its importation. Therefore, the Department based USP on the packed, delivered price to those unrelated purchasers.

The Department has determined that the date of sale is the purchase date for this merchandise and made deductions, where appropriate, for foreign inland freight, U.S. inland freight, U.S. customs duty, U.S. brokerage fees, ocean freight, marine insurance, foreign brokerage fees, and discounts. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price, as defined in section 773 of the Tariff Act. Home market price was based on a packed, delivered price to related and unrelated purchasers in the home market. In accordance with § 353.45 of the Department's regulations, the Department disregarded sales to one related dealer because the Department was not satisfied that the price was comparable to the price at which Benkan sold such or similar merchandise to unrelated parties. The Department made adjustments, where applicable, for inland freight, and for differences in packing costs and credit. At verification, the Department determined that the reported rebates for two customers were incorrect. Therefore, the Department recalculated these rebates to reflect the rebate rates which were actually paid.

No adjustments were made for the differences in merchandise because, at verification, the Department determined that Benkan improperly calculated the material costs by aggregating costs of different schedules of pipe. The Department's preference, as described above, for the higher weighted home market model match, was deemed to be best information available under these circumstances. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our comparison of United States price for foreign market value, the Department preliminarily determines that for Benkan 5.30 percent margins exist for the period March 1, 1990 through February 28, 1991.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any such written comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse, fro consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, or prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 353.22 of the Department's regulations.

Dated: May 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-10848 Filed 5-7-92; 8:45 am]

BILLING CODE 3510-05-M

[C-351-812, C-427-805, C-428-812, C-412-811]

Initiation of Countervailing Duty Investigations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: For Brazil and Germany, Rick Herring (202-377-3530), for France, Vincent Kane (202-377-2815); and for the United Kingdom, Stephanie Hager (202-377-5055), Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Initiation

The Petition

On April 13, 1992, we received petitions in proper form from Inland Steel Industries, including the Inland Steel Bar Company; and the Bar, Rod, & Wire Division of Bethlehem Steel Corp. on behalf of the U.S. industry producing certain hot rolled lead and bismuth carbon steel products. In accordance with 19 CFR 355.12, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Brazil, France, Germany, and the United Kingdom receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Petitioners allege that the following provide subsidies for producers of the subject merchandise in Brazil: Equity infusions on terms inconsistent with commercial considerations, long-term loans on terms inconsistent with commercial considerations, grants, preferential export financing, and tax benefits.

Petitioners allege that the following provide subsidies for producers of the subject merchandise in France: Equity infusions on terms inconsistent with commercial considerations, long-term loans and loan guarantees on terms inconsistent with commercial considerations, grants received in the form of equity write-offs, loan and interest forgiveness, conversion of loans to equity on terms inconsistent with commercial considerations, interest rebates, labor subsidies, and research and development assistance.

Petitioners allege that the following provide subsidies for producers of the subject merchandise in Germany: Grants, debt assumption and forgiveness, and worker assistance.

Petitioners allege that the following provide subsidies for producers of the subject merchandise in the United Kingdom: equity infusions on terms inconsistent with commercial considerations, regional development grants, grants received in the form of equity write-offs, and loan cancellations.

Because each of the countries under consideration is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to these investigations. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Brazil, France, Germany, and/or the United Kingdom materially injure, or threaten material injury to, the U.S. industry.

Petitioners have stated that they have standing to file the petitions because they are interested parties, as defined in section 771(9)(E) of the Act, and because they have filed the petitions on behalf of the U.S. industry producing the products subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Initiation of Investigations

Under section 702(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which a countervailing duty may be imposed under section 701(a) of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petitions on certain hot-rolled lead and bismuth carbon steel products (certain additive steel products) from Brazil, France, Germany, and the United Kingdom and have found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers, or exporters of certain hot rolled lead and bismuth carbon steel products receive subsidies. In accordance with section 702(d) of the Act, we are also notifying the ITC of these actions.

In the case of Brazil, we are not investigating certain programs alleged to be benefitting producers of the subject merchandise in Brazil. We are not investigating loans and loan guarantees provided by BNDES and FINAME financing because we found these programs not countervailable in Certain Carbon Steel Products from Brazil: Final Affirmative Countervailing Duty Determination (49 FR 17989, April 26, 1984) and in Oil Country Tubular Goods from Brazil: Final Affirmative Countervailing Duty Determination (49 FR 46570, November 27, 1984). Petitioners did not provide sufficient new evidence to warrant a re-examination of these programs at this time. We are not investigating Resolution 63 financing because information contained in the petition did not provide any evidence that benefits under this program are limited to a specific enterprise or industry, or to a group of enterprises or industries. We are not investigating equity infusions into Acesita since the information provided in the petition shows that the equity investments were not made on terms inconsistent with commercial considerations. Petitioners have also requested that we investigate all loans to the two producers Acesita and Vibasa, becaue these companies' annual reports show that they have fixed-rate debt, which petitioners allege is "suspicious". However, information submitted by petitioners also shows that fixed-rate debt is available in Brazil. Therefore, absent further information that Acesita's and Vibasa's debt is being provided to a specific enterprise or industry or group thereof on terms inconsistent with commercial considerations, we have no basis to investigate these loans. Finally, petitioners did not provide evidence to show that exemption of sales taxes on components of products destined for export, provided under the Import-Export Reform Plan, constitutes a countervailable subsidy. Because the exemption, or non-excessive refund, of domestic taxes on items physically incorporated into an exported product does not constitute a subsidy, we are not investigating this program.

Similarly, in the case of France, we are not investigating certain programs alleged to be benefitting producers of the subject merchandise in France. Information contained in the petition on the following programs was found to be outdated and, therefore, inadequate for

purposes of providing a reasonable basis to believe or suspect that subsidies are currently being conferred: Loans from the Fonds de Developpement Economique et Social, Credit National loans, loans from Caisse des Depots et Consinations, assistance for plant operating costs, and labor-related aid which deferred severance payments. Nor are we investigating the Economic and Social Development Fund, because the petition does not contain sufficient evidence that this fund provided assistance to commercial or industrial activities.

Scope of Investigation

The products covered by these investigations are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in these investigations are provided for under subheadings 7213.20.00.00, and 7214.30.00.00 of the (HTSUS). Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

ITC Notification

Section 702(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine, by May 28, 1992, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, by reason of imports from Brazil, France, Germany and/or the United Kingdom of certain additive steel products. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: May 4, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–10849 Filed 5–7–92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[CFDA No. 11.431; Docket No. 920103–2003]

NOAA Climate and Global Change Program; Program Announcement

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) began the Climate and Global Change Program (Program) in 1989. This Program contributes to the evolving national and international programs designed to improve our ability to observe, understand, predict, and respond to changes in the global environment. The Program builds on NOAA's mission requirements and longstanding capabilities in global change research and prediction.

NOAA's Climate and Global Change Program is a key contributing element of the U.S. Global Change Research Program (USGRP), which is coordinated by the interagency Committee on Earth and Environmental Sciences. NOAA's Program is designed to complement other agency contributions to that national effort, including, in particular, the Earth System Science activities of the National Aeronautics and Space Administration and the Global Geosciences Program of the National Science Foundation.

NOAA believes that the Climate and Global Change Program will benefit significantly from a strong partnership with outside investigators. Current Program plans assume that 30–35% of the total resources available ($47 million in FY92) will support extramural efforts, particularly those involving the broad academic community. Approximately $15 million will be applied toward extramural grants and cooperative agreements already in progress and those proposals submitted in FY91 that were recommended for funding in FY92. Remaining funds, approximately $450,000, will be available for new grants and cooperative agreements.

DATES: Proposals must be submitted on or before June 8, 1992.

ADDRESSES: Proposals may be submitted to: Office of Global Programs, National Oceanic and Atmospheric Administration, 1100 Wayne Avenue, suite 1225, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: The Office of Global Programs, National Oceanic and Atmospheric Administration, at the address given above; (301) 427–2089; OMNET: NOAA.GP.

SUPPLEMENTARY INFORMATION:

Program Authority: 49 U.S.C. § 1463; 15 U.S.C. § 313; 15 U.S.C. § 2901; and 15 U.S.C. § 2921.

Program Objectives

The long term objective of the Climate and Global Change Program is to provide reliable predictions of global climate change and associated regional implications on time scales ranging from seasons to a century or more. NOAA believes that these time scales can be studied with an acceptable probability of success and are the most relevant for fundamental social concerns.

Predicting the behavior of the coupled ocean-atmosphere-land surface system will characterize NOAA's role in a successful national effort to deal with observed or anticipated changes in the global environment.

Program Priorities

In FY 1992, NOAA will give priority atention to individual proposals in the areas described below.

Atmospheric Chemistry

The Atmospheric Chemistry Project focuses on global monitoring, process-oriented laboratory and field studies, and theoretical modeling to improve the predictive understanding of atmospheric trace gases that influence the Earth's chemical and radiative balance.

Surface and Upper Ocean Observations

This program focuses on long-term, *in situ* ocean observations needed to assess climate and global change. The long range goal is to establish an effective system for *in situ* ocean observations in support of the U.S. Global Change Program. Observational programs will focus on measurements of the upper ocean temperature field on a global basis, the surface temperature and thickness of the high latitude ice cover, the sea surface and upper ocean salinity and sea surface meteorology.

Global Sea Level

The goal of the Global Sea Level Program is to monitor, understand, and predict global sea level change. Proposals for research and development are sought to enhance our understanding of past, present, and future rates of change in global sea level.

Ocean Circulation and Biogeochemistry

This project seeks to better understand: (1) The nature and influence of the interactions between the meridional circulation of the Atlantic Ocean, sea surface temperature and salinity, and the global atmosphere; (2) the world ocean current system; and (3) the role of the ocean in sequestering the increasing burden of anthropogenically-derived carbon dioxide in the atmosphere.

Tropical Oceans and Global Atmosphere (TOGA)

The goal of the TOGA Program is to understand and model the coupled variations of the global atmospheric circulation and tropical ocean circulation for the purpose of predicting the inter-annual variability of the atmospheric regime. TOGA supports research in the areas of monitoring and data management, empirical studies, and modeling and prediction.

Climate Modeling and Prediction

The long-term goal of this program is to model and predict climate variability on time and space scales relevant to global change.

Operational Measurements

The goal of this project is to develop and produce climate and global change information products from NOAA operational measurement systems, including environmental satellite and *in situ* observing systems.

Information Management

The goals of this project are: (1) To provide the organization and focus through which data producers, data managers, and data users actively participate in the design, implementation and review of the NOAA Climate and Global Change (C&GC) information management system; (2) to assist in construction of data and information (metadata) sets required by C&GC researchers; (3) to provide users with easy access to C&GC data and information; and (4) to manage long-term C&GC data and information archives.

Atmospheric and Land Surface Processes

Proposals are encouraged for research into the wide range of problems that limit our understanding of those atmospheric and land surface processes through which the overall energy and water balance of the Earth's climate system is maintained.

Marine Ecosystem Response

The principal objective of the Marine Ecosystem Response Program is to determine the relationship between ecosystem dynamics and the climatic variability associated with global change.

Paleoclimathology

The Paleoclimatology Program solicits proposals that will make significant advances in our understanding of decade to century-scale variability in the climate system. This includes use of new, high-resolution time series from climatically-sensitive areas presently without adequate data coverage (e.g., the tropics and southern hemisphere), and large data sets that can be used to reconstruct large-scale historical patterns of climatic change.

Economics

The Economics Program has two primary research areas: (1) The value of information and decision-making under uncertainty; and (2) impacts and adaptation.

Investigators are asked to clearly indicate which of these areas is being pursued. Prospective applicants are encouraged to contact the Program for further information. NOAA has a change of unique facilities and capabilities that can be applied to climate and global change investigations. Proposals that seek to exploit these resources in collaborative efforts between NOAA and extramural investigators are encouraged. Proposals should be sent to the NOAA Office of Global Programs rather than to individual project managers.

Selection Criteria

Selection criteria, with approximate weights, are as follows:

(1) Scientific Merit (40%)

Intrinsic scientific value of the study; importance and relevance to the goal of the Climate and Global Change Program and to the research areas listed above.

(2) Methodology (20%)

Focused scientific objective and strategy, including measurement strategies and data management considerations where appropriate; time line and milestones, products.

(3) Readiness (20%)

Nature of the problem; relevant history and status of existing work; level of planning, including existence of supporting documents; strength of proposed scientific and management team; past performance record of proposers.

(4) Linkages (10%)

Connections to existing or planned national and international programs; partnerships with other agency or NOAA participants, where appropriate.

(5) Costs (10%)

Adequacy of proposed resources; appropriate share of total available resources; prospects for joint funding; identification of long term commitments. Matching funding is encouraged but is not required.

Extramural eligibility is not limited and is encouraged with the objective of developing a strong partnership with the academic community. Non-academic proposers are urged to seek collaboration with academic institutions. Funding for non-U.S. institutions is not available under this announcement. Awards are made on the basis of competitive review. Each proposal receives independent mail review and is evaluated by one or more independent review panels. The time from target date to grant award varies with program area. Applicants will be notified of their status within 3 to 6 months.

Proposal Requirements

Proposals submitted in response to this announcement should include the following:

(1) An Original and Two Copies of the Proposal

Proposals must be limited to 30 pages (numbered), including budget, investigators' vitae, and all appendices, and should be limited to funding requests for one or two years duration. Proposals should be sent to the NOAA Office of Global Programs at the address given in this notice. The target date for submission of proposals for the FY 92 funding cycle is 30 days after the date of publication of this notice.

(2) Signed Title Page and Abstract

The title page should be signed by the Principal Investigator (PI) and the institutional representative and should clearly indicate which project area is being addressed. The PI and

institutional representative should be identified by full name, title, organization, telephone number and address.

(3) Statement of Work

The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goal of the Climate and Global Change Program, and the program priorities listed above. Benefits of proposed project to the scientific community, governmental agencies and the general public should be discussed. An abstract must be included in the statement of work.

(4) Budget

A detailed budget is required. Personnel costs, including salaries and fringe benefits, permanent equipment, expendable equipment, travel, publication costs, indirect costs and other costs such as those for supplies, printing, computer time, or utilities must be included.

(5) Vitae

Abbreviated curriculum vitae are sought with each proposal. Reference lists should be limited to all publications in the last three years, with up to five other relevant papers.

(6) Other Requirements

Application for federal assistance must be submitted on Standard Forms 424, 424A and 424B.

(i) Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant or loan. Applicants must submit the form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and, if applicable, Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying."

(ii) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. This program is excluded from coverage under Executive Order 12372.

(iii) Applicants are reminded that inclusion of false information on an application can provide grounds for denying or terminating funds. In addition, applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Dated: May 4, 1992.

Dr. J. Michael Hall,

Director, Office of Global Programs, National Oceanic and Atmospheric Administration.

[FR Doc. 92–10795 Filed 5–7–92; 8:45 am]

BILLING CODE 3510–12–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Request for modification to Permit No. 748 (P77#50).

Notice is hereby given that the National Marine Fisheries Service, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038 has applied in due form for a modification to Permit No. 748, issued on August 8, 1991, to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR part 217–222).

Permit No. 748 authorizes harassment of several cetacean species incidental to photo-identification studies. The applicant requests addition of aerial surveys to those activities authorized by this Permit and an increased number of takes of those species previously authorized, in order to include all cetaceans which may be sighted during the course of conducting aerial surveys. The applicant also requests addition of the following species to the list of cetaceans which may be sighted during the surveys, over the remaining two year period:

100 sei whales (*Balaenoptera borealis*), 100 pygmy and dwarf sperm whales (*Kogia* spp.), 100 false killer whales (*Pseudorca crassidens*), 100 striped dolphins (*Stenella coeruleoalba*), 100 beaked whales, including Cuvier's beaked whale (*Ziphius cavirostris*) and up to five species of *Mesoplodon*.

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 the Committee of Scientific Advisers.

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 7234, Silver Spring, MD 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 appointments:

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

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

Dated: May 1, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–10750 Filed 5–7–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 8, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 6, 13 and 20, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 8115, 8863, 9690 and 9691) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Strap, Webbing
5340–01–164–4930
(Remaining Government Requirement)
Chest, Tool
7310–00–310–8544
Pad, Comfort, Ground Troops, Parachutists
8470–00–NIB–0001
(Requirements for the Army & Air Force Exchange Service, Dallas, Texas)

Services

Administrative Service
Environmental Protection Agency at the following locations:
501 Third Street, NW.
Washington, DC
1550 Wilson Boulevard
Rosslyn, Virginia
all remaining Washington, DC Metro area locations
Janitorial/Custodial
Building 323
Robins Air Force Base, Georgia
Mailing Service
U.S. Department of State
Office of Recruitment, Examination and Employment
Arlington, Virginia
Sorting of Aperture Cards
EDCARS System Management Office
AFLC LMSC/SXMA
Wright-Patterson Air Force Base, Ohio
Sorting of Time and Attendance Reports
Department of Transportation
1777 Phoenix Parkway Building
College Park, Georgia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–10942 Filed 5–7–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before June 8, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and a service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and a service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and a service.

3. The action will result in authorizing small entities to furnish the commodities and a service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and a service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and a service to the Procurement List:

Commodities

Apron, Laboratory, Plastic
8415–00–715–0450
Nonprofit Agency: Wichita Industries & Services for the Blind, Inc., Wichita, Kansas at its facility in Kansas City, Kansas
Cocoa Beverage Powder
8960–01–275–4207
Nonprofit Agency: Indianhead Enterprises of Menomonie, Inc., Menomonie, Wisconsin

Service

Recycle Cassette Mailing Containers
Library of Congress
National Library Service for the Blind & Physically Handicapped, Washington, DC
Nonprofit Agency: York County Blind Center York, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–10943 Filed 5–7–92; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Engineering in the Manufacturing Process; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Engineering in the Manufacturing Process will meet in closed session on May 18–19, 1992 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will identify manufacturing technologies and engineering methods that can meet the Department's future needs for fieldable prototypes, rapid transition to production on demand, and economic low volume manufacturing.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 4, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–10792 Filed 5–7–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Low Observable Technology, Subgroup on Special Operations Forces Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Low Observable Technology, Subgroup on Special Operations Forces will meet in closed session on May 26–27, 1992 at Booz, Allen & Hamilton, Inc., Vienna, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will investigate the operational utility and costs associated with employing low observable technology for Special Operations Forces (SOF) mission areas.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: May 4, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–10793 Filed 5–7–92; 8:45 am]

BILLING CODE 3810–01–M

Special Operations Policy Advisory Group; Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Thursday, May 21, 1992 in the Pentagon, Arlington, Virginia to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict forces.

In accordance with section 10(d) of Public Law 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1) of Title 5, United States Code, this meeting will be closed to the public.

Dated: May 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–10791 Filed 5–7–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, June 2, 1992; Tuesday, June 9, 1992; Tuesday, June 16, 1992; Tuesday, June 23, 1992; and Tuesday, June 30, 1992, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, June meetings will be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this June meeting be obtained by writing the chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: May 4, 1992.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–10789 Filed 5–7–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Floodplain Involvement Notification for Proposed Remedial Action at the Department of Energy's Portsmouth Gaseous Diffusion Plant, Piketon, OH

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain involvement and opportunity for comment.

SUMMARY: DOE proposes to remediate the mercury contamination of Well 6B of the X–608 Wellfield located within the Portsmouth Gaseous Diffusion Plant at Piketon, Ohio. Well 6B is a production field well located within the 100-year Scioto River Foodplain. Remediation activities would involve: The installation of a temporary steel casing; the removal of the existing well casing and screen; the removal of soil and water from within the casing; and the installation of a new well casing and screen. Final remediation would involve backfilling the annular space with fresh

gravel pack, bentonite sealant, and uncontaminated soil.

Historical data indicates that the mercury concentration in the well does not exceed levels that the Environmental Protection Agency maximum concentration for hazardous waste toxicity characteristic as set forth in 40 CFR 261.24. Any hazardous waste encountered would be managed in accordance with applicable federal and state hazardous waste requirements.

The proposed action would be preformed in such a manner as to avoid or minimize potential impacts on the floodplain and any wetlands that may be encountered during the survey. (However, it is not anticipated that wetlands would be encountered.) In accordance with DOE regulations at 10 CFR part 1022, DOE will prepare a floodplain assessment (including wetlands if necessary) and publish a floodplain statement of findings in accordance with 10 CFR 1022.15. Maps and further information are available from DOE at the address below.

DATES: Comments are due by May 26, 1992. Late comments will be considered to the extent practicable.

ADDRESSES: Send comments to Robert C. Sleeman, Director, Environmental Restoration Division (EW–91), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541. Fax comments to 615–576–7042.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–10850 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

Floodplain Involvement Notification for Installation of Water Monitoring Devices at the Rocky Flats Plant (RFP) Near Golden, CO

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: Regulations at 10 CFR part 1022 require the Department of Energy (DOE) to evaluate actions it may take in a floodplain, in order to ensure consideration of protection of the floodplain in decision making. As soon as practicable, after a determination that a floodplain may be involved, 10 CFR 1022.14 requires that a public notice be published in the **Federal Register** including a description of the proposed action and its location. The proposed action does not involve wetlands.

The DOE proposes to upgrade existing surface water monitoring equipment and to install and operate new water monitoring stations. Both actions are in the vicinity of the three creeks that drain the RFP (i.e., Woman, Walnut, and Rock Creeks) at sites that may involve floodplains. The upgrading action to six water monitoring stations consists of pouring a concrete foundation near each of the existing stations, and then placing a small (60 square feet) prefabricated fiberglass shed on the foundation to house monitoring equipment. Buried cables would connect the monitoring equipment with collection devices and sensors in the nearby sheds.

The new monitoring stations would be placed at seven site at the RFP. A foundation and shed similar to those described for the upgrade action would be built. Either one or two flumes (narrow artificial channels) would be constructed in the creek near each station and sensors would be installed.

The action would involve some alignment of the stream channels, installation of concrete foundations for the flumes, and placement of riprap to control flow and reduce potential for erosion. The installation of the flumes could cause a surface disturbance as large as 40 feet long and 40 feet wide. Buried cables would connect the flume and the sensors to the monitoring shed.

Both of these actions would require short-term access to the site by a limited amount of vehicular traffic, including trucks for mixing concrete and for transporting the sheds.

DATES: Comments on the proposed action must be postmarked by May 26, 1992 to assure consideration.

ADDRESSES: Comments should be sent to: Beth Brainard, Public Affairs Office, Rocky Flats Office, U.S. Department of Energy, P.O. Box 928, Golden, CO 80402–0928, Telephone: (303) 966–5993. FAX comments to: (303) 966–6633.

FOR FURTHER INFORMATION CONTACT: For information on general DOE 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) 472–2856.

SUPPLEMENTARY INFORMATION: A map showing the locations of the existing and proposed locations of the monitoring stations is available upon request.

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

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 92–10851 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

Floodplain Involvement Notification for Site Characterization Field Work in Operable Units 3, 4, 7, and 9 at the Rocky Flats Plant near Golden, CO

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: Regulations at 10 CFR part 1022 require DOE to evaluate actions it may take in a floodplain in order to ensure proper consideration of protection of the floodplain in decision making. As soon as practicable after a determination that a floodplain may be involved, 10 CFR 1022.14 requires that a public notice be published in the **Federal Register**, including a description of the proposed action and its location. The proposed action does not include wetlands.

DOE proposes to carry out site characterization activities, some of which would be within designated floodplains, at its Rocky Flats Plant (RFP) north of Golden, Colorado. These activities would be a part of DOE's effort to determine the existence, nature, and extent of any environmental contamination resulting from RFP operations, as required by the Rocky Flats Interagency Agreement entered into by DOE, the U.S. Environmental Protection Agency, and the State of Colorado.

DATES: Comments on the proposed action must be postmarked by May 26, 1992 to ensure consideration.

ADDRESSES: All comments concerning this notice should be addressed to: Floodplain Comments, c/o Beth Brainard, Public Affairs Office, Rocky Flats Office, U.S. Department of Energy, Post Office Box 928, Golden, Colorado 80402–0928. Telephone (303) 966–5993. Fax comments to: (303) 966–6633.

FOR FURTHER INFORMATION CONTACT: Information on general DOE floodplain environmental review requirements is available from: 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.

SUPPLEMENTARY INFORMATION: DOE proposes to carry out site characterization activities, some of which would be within floodplains, at its RFP north of Golden, Colorado, to determine the nature and extent of any contamination as part of cleanup actions under the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act as

required by the Rocky Flats Interagency Agreement. The project includes the collection of surface water, groundwater, soil, sediment, and air samples, and field surveys and sampling of terrestrial and aquatic biota. The site characterization work would be located in Operable Unit (OU) 3 (Off-site Areas), OU 4 (Solar Evaporation Ponds), OU 7 (Present Landfill), and OU 9 (Original Process Waste Lines) and will start in the spring of 1992. Most of work is expected to be carried out during 1992, though some would continue into 1993 and beyond.

The site characterization work that would take place in floodplains consists of the following. Soil samples would be collected from OUs 3, 4, and 7. Six vertical soil profile trenches, each approximately 9 feet long, 5 feet wide, and 4 feet deep, would be dug by backhoe in OU 3 to obtain soil samples. Approximately 1,500 2-to 3-tablespoon soil samples would be taken by hand from the top 1/4 inch of ground at locations within 12 miles of RFP as part of the OU 3 program. Approximately 35 soil samples would be collected from a depth of up to 1 inch at site OU 4. Soil samples would be taken from depths of 2 to 3 inches at 12 locations in OU 7. Sediment samples would be taken from the bottoms of streams, ditches, ponds, and reservoirs at or near RFP for the OU 3 and OU 7 programs.

Surface water samples would be obtained from water bodies on and near the Plant for OU 3 and OU 7. Groundwater samples would be collected from new and existing monitoring wells for OU 3 on and off the RFP site. A total of eight wells/boreholes would be drilled to obtain ground-water and/or soil samples on OUs 3 and 4. Typical wells and boreholes are 6 inches in diameter and 15 to 60 feet deep, though some may be deeper.

Also at OU 3, air sampling and metorological monitoring stations would be established and operated. Two air sampling stations and two 6-meter meteorological towers would be located in the environs of Standley Lake (southeast of RFP) for the OU 3 program. Tests would be conducted with small- and medium-sized portable wind tunnels on exposed areas of the Standley Lake bed to identify the ability to winds at various speeds to pick up and transport exposed sediments.

Samples of flora and fauna would be collected in OUs 3, 4, 7, and 9. A radiological survey would be conducted in the area of OU 4 using hand-held instruments. Finally, excavations may be made in the South Walnut Creek floodplain to locate and investigate possible buried pipelines as part of OU 9 characterization.

Maps showing locations of the specific site characterization activities are available on request from the Rocky Flats Office (see **ADDRESSES** above).

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–10852 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–10–M

Noncompetitive Financial Assistance Award

AGENCY: Bartlesville Project Office, U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7 (b)(2)(i)(A) and (D), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to the Oklahoma Geological Survey (OGS) (University of Oklahoma) for continued development and upkeep of the "Natural Resources information System (NRIS) for the State of Oklahoma"—a joint effort with the Geological Information Systems (GIS) Department of the University of Oklahoma Sarkeys Energy Center.

SUPPLEMENTAL DATA:

Grant No.: DE–FG22–92BC14853.

Title: Support of "Natural Resources Information system (NRIS) for the State of Oklahoma".

Awardee: Oklahoma Geological Survey (University of Oklahoma).

Term: 24 months (Est. Award Date, 5/18/92).

Cost: Total estimated cost is $952,661 of which $252,661 will be borne by the awardee, with the remaining $700,000 funded by DOE.

Scope: The objective is to continue to develop, edit, maintain, utilize and make available to the public the oil and gas Well History File portion of the Natural Resources Information System (NRIS) for the State of Oklahoma. The proposed work is considered to be relevant to the DOE mission in that the program will provide a mechanism for communication and interactive research efforts between DOE and the Oklahoma Geological Survey in the development and maintenance of an information system in response to the need for a computerized, centrally located library containing accurate, detailed information on the state's natural resources. The two-year cooperative research program extends an unique opportunity to complete the foundation of the NRIS oil and gas Well History File by processing all remaining historical completion records which can have a major impact on the projects for assessing and identifying future directions in the state's natural resources.

FOR FURTHER INFORMATION WRITE TO: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Donna J. Lebetz, Contract Administrator, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

Released In Washington, DC on April 27, 1992.

Richard D. Rogus,

Chief, Contracts Group Acquisition and Assistance Div.

[FR Doc. 92–10853 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Environmental Restoration and Waste Management

Analytical Services Program; Availability for Public Review and Comment

AGENCY: Department of Energy, Office of Environmental Restoration and Waste Management.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) Office of Environmental Restoration and Waste Management (EM) is making available for public review and comment its "Analytical Services Program (ASP) Plan (First Edition—January 29, 1992)" describing how DOE will obtain analytical services to support its environmental restoration and waste management activities.

DATES: Written comments on this document will be accepted by mail at the address given below until June 22, 1992.

ADDRESSES AND FOR FURTHER INFORMATION: The document is available from the Office of Environmental Restoration and Waste Management, Laboratory Management Division (EM–513), Trevion II, U.S. Department of Energy, Washington, DC 20585–0002. Comments and requests for additional information should be addressed to Dr. Daniel Lillian, Laboratory Management Division, Trevion II, U.S. Department of Energy, Washington, D.C. 20585–0002; telephone number (301) 903–7956. Express mail should be sent to the Laboratory Management Division (EM–513), Trevion II, U.S. Department of Energy, 19901

Germantown Road, Germantown, MD 20874–1290. Registered, certified, or insured mail should be sent to the Office of Environmental Restoration and Waste Management, Laboratory Management Division (EM–513), Trevion II, P.O. Box A, Germantown, MD 20874–0963. The ASP Plan and copies of all comments received will be available for inspection in the DOE Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20285, between the hours of 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

DOE's Office of Environmental Restoration and Waste Management (EM) has been tasked with addressing all environmental contamination and waste problems facing the Department. A key element of any environmental restoration or waste management program is the availability of physical, chemical, and radiochemical data. An effective and efficient sampling and analysis program is required to generate credible environmental data. The Laboratory Management Division in EM's Office of Technology Development was established to provide the programmatic direction needed to establish and operate an EM-wide environmental sampling and analysis program.

There are many issues presented in the ASP Plan with respect to environmental sampling and analysis. One such issue relates to DOE's need to analyze hundreds of thousands of samples per year for a variety of parameters. This large workload requires development of a standard approach on distributing samples for analyses between DOE and the commercial sector. It is DOE's current position that commercial laboratories will play a major role in filling DOE's environmental restoration and waste management analytical needs.

Other issues discussed in the ASP Plan include the development of an Environmental Sampling and Analysis Quality Assurance Requirements Document, the need for standard contracting requirements for radio analytical and chemical analysis, and the development of a Compendium of Analytical Chemistry Methods for mixed and radioactive waste for use by analytical laboratories. The ASP Plan also discusses the need for local and national sample management offices, the adaptation of existing hazardous waste analytical methods to the analysis of mixed waste, the performance evaluation and audit programs being developed for use in assessing analytical laboratory operations, and the Data Quality Objectives (DQOs) process for reducing the amount of time and the cost involved in environmental sampling and analysis activities.

DOE is interested in receiving comments on all aspects of the ASP Plan. These comments will be reviewed and, where appropriate, addressed in the next edition of the ASP Plan. These comments also will be valuable in assisting in DOE's development of EM's environmental sampling and analysis programs. All comments received will be compiled, summarized, and reviewed issue by issue, and will be available for inspection in the DOE Reading Room at the address specified above. Responses to the issues raised in the comments also will be available in the DOE Reading Room.

The Laboratory Management Division will conduct a meeting to discuss technical aspects of the ASP Plan in the late summer or early fall. Parties interested in attending or participating in this meeting should contact Dr. Lillian by June 22, 1992, in order to receive further details. Parties interested in receiving future ASP documents for comment should provide a written request to Dr. Lillian for inclusion on a master distribution list.

Issued in Washington, DC, on April 29, 1992.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 92–10570 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP92–453–000, et al.]

Panhandle Eastern Pipe Line Co., et al; Natural Gas Certificate Filings

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

1. Panhandle Eastern Pipe Line

[Docket No. CP92–453–000]

April 28, 1992.

Take notice that on April 13, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251–1642 filed in Docket No. CP92–453–000, 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), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that it was granted certificate authorization to provide firm and interruptible transportation service on behalf of CNG by Commission Order dated June 13, 1985, in Docket No. CP85–288–000. It is further stated that the service was from Vermilion Block 340, Offshore Louisiana, pursuant to Rate Schedule T–62 of Panhandle's FERC Gas Tariff. Panhandle maintains that it delivered the gas to Truckline Gas Company at Vermilion Block 321 for further transportation to Transcontinental Gas Pipeline Corporation (Transco) in Beauregard Parish, Louisiana and Transco made final delivery of the gas to CNG.

Panhandle assets that CNG has notified Panhandle of its desire to terminate the service effective July 10, 1992. Panhandle is therefore seeking permission and approval to abandon the exchange service.

Comment date: May 19, 1992, in accordance with Standard Paragraph F at the end of this Notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP92–463–000]

April 29, 1992.

Take notice that on April 23, 1992, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed a prior notice request with the Commission in Docket No. CP92–463–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a two-inch hot tap as a delivery point in order to provide an interruptible transportation service for Union Natural Gas Company (Union), an intrastate pipeline company, under the blanket certificates issued in Docket Nos. CP82–535–000, CP88–136–000, and as amended in CP88–136–007 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Texas eastern proposes to construct and operate a two-inch hot tap on its 24-inch pipeline in Polk County, Texas, which would serve as a delivery point for Union's natural gas service to the city of Onalaska, Texas. Texas Eastern states that Union would reimburse Texas Eastern for the estimated $31,700 construction cost of the proposed facilities. Texas Eastern also states that pursuant to a March 24, 1992, service agreement with Union that Texas Eastern would transport and deliver up

to 1,000 dekatherms of natural gas per day under its FERC Rate Schedule IT–1 to Union at the proposed delivery point. Texas Eastern also states that its tariff does not prohibit additional delivery points.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP92–465–000]

April 29, 1992.

Take notice that on April 24, 1992, Texas Gas Transmission Corporation (Texas Gas) P.O. Box 1160, Owensboro, Kentucky 42309, filed in Docket No. CP92–465–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to Indiana Natural Gas Corporation (Indiana Natural) in Crawford County, Indiana, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes Natural gas sales to Indiana Natural pursuant to a service agreement dated November 1, 1991. Texas Gas states further that the proposed new delivery point would enable Indiana Natural to render natural gas service to approximately 175 new residential customers and 15 new commercial customers in Crawford County, Indiana.

It is said that the annual maximum quantity of natural gas to be delivered to the proposed new delivery point would be an estimated 50,000 MMBtu, with an estimated maximum daily delivery of 250 MMBtu. It is further said that the addition of the new delivery point would not result in an increase in Indiana Natural's current daily contract demand.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Canada Imperial Oil Limited

[Docket No. CI92–37–000]

April 30, 1992.

Take notice that on April 1, 1992, Canada Imperial Oil Limited (CIOL) of 111 St. Clair Avenue West, Toronto, Ontario, Canada M5W 1K3, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source (domestic or foreign) and from "first sale" sellers, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 14, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. Northern Natural Gas Company

[Docket No. CP92–468–000]

April 30, 1992.

Take notice that on April 17, 1992, Northern Natural Gas Company (northern), 1111 South 103d Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP92–468–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Wisconsin Power and Light (WP&L) under the authorization issued in Docket No CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern requests this authority to upgrade an existing delivery point to accommodate increased natural gas deliveries to WP&L under Northern's FT–1 Rate Schedule. Northern stated that WP&L has requested an incremental firm transportation service of 8,000 Mcf of natural gas per day (Mcfd) for ten years, starting with the 1992–1993 heating season, due to the increased requirements for natural gas within WP&L's existing service area.

Northern proposes to upgrade the Wisconsin Dells TBS #1 delivery points located in section 4, T13N, R6E, Sauk County, Wisconsin. It is stated that the total volumes currently delivered at this point are 1,503 Mcf on a peak day and 180,063 annually. Northern proposes that the total volumes to be delivered at the upgraded delivery point will be 3,503 Mcf on a peak day and 410,245 Mcf annually.

In addition to the upgrade of the existing delivery point, Northern states that it will construct certain facilities under its blanket authority in Docket No. CP82–401–000. Upon receipt of the authorization requested here, Northern states that it will construct approximately 22.4 miles of looping on the existing New Lisbon Branchline to provide incremental firm transportation service of 8,000 Mcfd through the upgraded delivery point and four other existing delivery points which do not require modification.

It is stated that the facilities described here will be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Third Revised Volume No. 1. Northern estimates the total cost to upgrade the delivery point is $100,000. Northern states that there will be no contribution in aid of construction required by WP&L.

Northern states that the total volumes of gas to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Northern further states that the proposal is not prohibited by its existing tariff and that it has sufficient capacity to accomplish the changes proposed without detriment or disadvantage to its other customers.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. National Fuel Gas Supply Corporation

[Docket No. CP92–464–000]

April 30, 1992.

Take notice that on April 24, 1992, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203 filed in Docket No. CP91–464–000 a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to (1) construct and operate tap facilities with respect to an existing wholesale customer, National Fuel Gas Distribution Corporation (Distribution); (2) construct and operate two new delivery points with respect to Distribution; and (3) to construct and operate a new delivery point with respect to a new firm transportation customer, Wy-Catt Pipeline Company (Wy-Catt) under the blanket certificate issued in Docket No. CP83–4–000 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 inspection.

Comment date: June 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. ONG Western, Inc., et al.

[Docket No. CI92–40–000]

April 30, 1992.

Take notice that on April 15, 1992, ONG Western, Inc. ONG Red Oak Transmission Company, ONEOK Services, Inc., ONG Sayre Storage Company, ONG Transmission Company, a division of ONEOK Inc. and Oklahoma Natural Gas Company, a division of ONEOK Inc. (jointly referred to as ONG) of 100 West Fifth Street,

Tulsa, Oklahoma 74103–4219, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source (domestic or foreign), and in gaseous or liquid (LNG) form, to the extent such sales would be subject to the Commission's NGA jurisdiction, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 14, 1992, in accordance with Standard Paragraph J at the end of the notice.

8. NI–TEX, Inc.

[Docket No. CI92–41–000]

April 30, 1992.

Take notice that on April 22, 1992, NI–TEX, Inc. (NI–TEX) of 5265 Hohman Avenue, Hammond, Indiana 46320, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of natural gas from any source (domestic or foreign), and in gaseous or liquid (LNG) form, to the extent such sales would be subject to the Commission's NGA jurisdiction, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: May 14, 1992, in accordance with Standard Paragraph J at the end of this notice.

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 the Regulation 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 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. 92–10754 Filed 5–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD92–06271T, Pennsylvania–6]

Commonwealth of Pennsylvania; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 4, 1992.

Take notice that on April 30, 1992, the Bureau of Oil and Gas Management of Pennsylvania (BOGM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Catskill/Lock Haven Formation in certain portions of Centre, Clinton and Lycoming Counties, Pennsylvania, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application is described in the attached appendix.

The notice of determination also contains BOGM's findings that the referenced portions of the Catskill/Lock Haven Formation meet 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.

Lois D. Cashell,

Secretary.

Appendix

Commonwealth of Pennsylvania, Docket No. JD92–06271T, Pennsylvania–6.

County and Township

Centre

Rush	Union	Curtin
Taylor	Boggs	Liberty
Worth	Snow Shoe	
Huston	Burnside	

Clinton

Beech Creek	Gallagher	Dunnstable
Bald Eagle	Colebrook	Pine Creek
Grugan	Woodward	
Chapman	Allison	

Lycoming

Brown	Pine	Jackson
McHenry	Cummings	Cogan House

Watson	Lewis	Schrewsbury
Mifflin	Gamble	Wolf
Anthony	Hepburn	Penn
Lycoming	Eldrid	Franklin
McNett	Plunketts Creek	Jordan
McIntyre	Upper Fairfield	
Cascade	Mill Creek	

[FR Doc. 92-10821 Filed 5-7-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ92-4-63-000 and TM92-2-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1992.

Take notice that on April 30, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Twenty-Ninth Revised Sheet No. 8
Twenty-Ninth Revised Sheet No. 9

Carnegie states that pursuant to sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie during the month of May 1992. Carnegie states that the primary purpose of its filing is to accurately state the average commodity cost of gas on Carnegie's tariff sheets so that the negotiated sales rates agreed upon between Carnegie and its customers for interruptible sales service during May 1992 will be in compliance with the rate conditions imposed by the Commission in issuing the SEGSS certificate and footnote 2 reflected on Revised Tariff Sheet No. 9.

The revised rates are proposed to become effective May 1, 1992, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ92-3-63-000: a $0.0302 per dth decrease in the demand component of its LVWS and CDS rate schedules; $0.2482 per Dth increase in the commodity component of its LVWS and CDS rate schedules; a $0.0010 per Dth decrease in its DCA charge under its LVWS and CDS rate schedules; Rate Schedules SEGSS; and a $0.2482 per Dth increase in the maximum commodity rate under Rate Scehdules SEGSS. The revised tariff sheets also reflect a decrease in the TCA charge of $0.0514 per dth, from $0.1921 per dth to $0.1407 per dth.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedures 18 CFR sections 385.214 and 385.211. All such pleadings should be filed on or before May 11, 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10822 Filed 5-7-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-44-034]

El Paso Natural Gas Co., Supporting Information Filing

May 4, 1992.

Take notice that on April 1, 1992, EL Paso Natural Gas Company (El Paso) tendered for filing pursuant to the technical conference held on December 4, 1991, supporting information reflecting actual versus billed costs for the two-month period that the rates at Docket No. RP92-5-000 were in effect as required by the Commission's August 14, 1991 order on rehearing at Docket No. RP88-44-000, *et al.*

El Paso states that it is submitting the following information supporting its actual versus billed WACOG for each month of the two-month period ended December 1991, (1) summary of WACOG true-up; (2) actual WACOG at the mainline receipt point (MRP) for November and December 1991; and EL Paso's actual cost of gas for the two months ended December 31, 1991 in a format similar to FERC Form No. 542-PGA, Schedule Al, Part 1, in order to provide information which will substantiate El Paso's actual cost of gas.

El Paso states that copies of the filing is being served upon those parties purchasing gas and impacted by the WACOG true-up.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission. 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10827 Filed 5-7-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ92-5-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

May 4, 1992.

Take notice that Equitrans, Inc. (Equitrans) on April 30, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective June 1, 1992.

Thirty-Sixth Revised Sheet No. 10
Twenty-Sixth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's Regulations and section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.1239 per dekatherm (Dth) and a decrease in the commodity cost of $0.2927 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.0532 per Dth.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 and 385.214). All such motions or protests should be filed on or before May 11, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10824 Filed 5-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-59-001]

Northern Natural Gas Co., Notice of Proposed Changes in FERC Gas Tariff

May 4, 1992.

Take notice that on April 27, 1992, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Sub One Hundred Sixth Rev. Sheet No. 4B
Sub Seventy-fourth Rev. Sheet No. 4B.1

Northern states that on March 31, 1992, in Docket No. TQ92-6-59-000 Northern filed its Out-of-Cycle Quarterly PGA effective April 1, 1992. Northern states that the Out-of-Cycle filing superseded the quarterly PGA filed in Docket Nos. TQ92-5-59-000 and TQ92-5-59-001.

Northern states that on April 27, 1992 Northern filed a compliance on Docket Nos. TQ92-5-59-000 and TQ92-5-59-001. Northern asserts that it filed tariff sheets to adjust the demand rates as a result of a change in the market area allocation factor.

Northern states that it is filing to adjust the demand rates as filed in Docket No. TQ92-6-59-000. Northern states that these rates must be adjusted to allow for an orderly and correct transition from the rates established in the quarterly PGA, in Docket No. TQ92-5-59-000 and 001, to the rates established in the Out-of-Cycle filing in Docket No. TQ92-6-59-000, effective April 1, 1992.

Northern states that copies of the filing have been mailed to each gas sales customer and interested state commissions on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10826 Filed 5-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-59-002]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 4, 1992.

Take notice that on April 27, 1992, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

2 Sub Sixty-Eighth Rev. Sheet No. 4A
2 Substitute 105 Revised Sheet No. 4B
2 Sub Seventy-Third Rev. Sheet No. 4B.1

Northern states that on April 10, 1992, the Commission issued an order in Docket No. TQ-92-5-29-001 directing Northern to (1) file corrected market area demand rates based on a change from an allocation factor of .971851 to an allocation factor of .963525, (2) to provide additional information to support the billing determinants as filed in Docket Nos. TQ92-5-29-000 and TQ92-5-59-001, and (3) to prospectively round its Argus Community Sales Demand rate to four places or explain the basis of charge to three places.

Northern states that it has reviewed the Tariff Sheet No. 4B.1 and found that the filed Argus Community Sales Demand rate has historically been rounded to three places. Northern also states that it will prospectively assure that Schedule D1, Text ID, 12, Workpaper No. 1 agrees with the tariff sheet.

Northern states that copies of the filing have been mailed to each gas sales customer and interested state commissions on the service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10829 Filed 5-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-28-006]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

May 4, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on April 28, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Nineteenth Revised Sheet No. 43-02
Eighteenth Revised Sheet No. 43-04

Panhandle states that the tariff sheets submitted herewith revise its Purchased Gas Adjustment (PGA) clause to provide that the sales rates will not reflect the costs associated with Panhandle's non-sales service fuel and lost and unaccounted-for gas.

Panhandle states that copies of the filing were served on Panhandle's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 11, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-10825 Filed 5-7-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-1252-005]

Questar Pipeline Co.; Tariff Filing

April 29, 1992.

Take notice that Questar Pipeline Company on April 14, 1992, tendered for filing and acceptance Second Revised Sheet No. 4 and Alternate Second Revised Sheet No. 4 to Original Volume No. 2-A of its FERC Gas Tariff.

Questar states that the purpose of this filing is to implement a new injection charge for firm and interruptible storage

service as directed by the Commission in its May 21, 1991, order in Docket No. CP91–1252–000.

Questar requests an effective date of May 15, 1992, for the proposed tariff sheets and states that this filing has been served upon the official service list compiled by the secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before May 6, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92–10830 Filed 5–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–164–000]

Tarpon Transmission Co.; Proposed Changes in FERC Gas Tariff

May 4, 1992.

Take notice that on April 30, 1992, Tarpon Transmission Company (Tarpon) tendered for filing the following revised tariff sheets to Tarpon's FERC Gas Tariff, Original Volume No. 1, with a proposed effective date of June 1, 1992:

Ninth Revised Sheet No. 2A
First Revised Sheet No. 42
Second Revised Sheet No. 86A
Third Revised Sheet No. 96A

Tarpon states that it proposes by the filing to increase its maximum rate for firm and interruptible "open Access" transportation service (exclusive of the ACA charge) from 7.50 to 15.90 cents per MCF. Tarpon further states that it proposes (1) to increase its 2.80 cent per Mcf regulatory commission expense "special charge" to 3.58 cents per Mcf; and (2) to increase its base rate from 4.70 to 12.32 cents per Mcf (see Ninth Revised Sheet No. 2a). Tarpon asserts that the proposed changes would increase Tarpon's annual revenues by about $1,432,410 based on Tarpon's adjusted 1991 throughput. Tarpon also asserts that the increase is required to compensate for the decline in throughput that has occurred since the determinations made in Docket No. RP84–82–005 (remand) and Docket No. RP92–97–000. Tarpon further avers that it has not modified those operating and maintenance cost factors that were specifically limited in those proceedings. In addition, Tarpon avers that the filing noticed here conforms to the Commission's requirement under Order No. 636.

Tarpon states that copies of the filing were served upon Tarpon's shippers and all parties in Docket Nos. RP84–82–000, *et al* and RP22–97–000, *et al.*

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 11, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 92–10828 Filed 5–7–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–163–000]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

May 4, 1992.

Take notice that on April 30, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume Nos. 1–A, 1–B and 2 as listed on appendices A, B, C and D attached to the filing.

Williston Basin states that the proposed non-gas base tariff rates reflected on the tariff sheets contained in Appendices A and B, when compared with the rates filed on March 6, 1992 in Docket Nos. RP86–10–013 and RP 86–10–014 are designed to produce annual jurisdictional revenue increases of $658,603 and $1,974,182, respectively. The proposed effective date for the tariff sheets listed on appendix A is June 1, 1992 and the proposed effective date for the tariff sheets listed on Appendix B is January 1, 1993. In the event the Commission suspends the revised base tariff rates reflected on the tariff sheets listed on appendix A beyond the proposed June 1, 1992 effective date and requires Williston Basin to make a restatement filing under § 154.303, the alternate base tariff rates reflected on the tariff sheets listed on appendix C are such required restatement rates to be effective during the suspension period ordered for the tariff sheets in appendix A.

Williston Basin further states that the base tariff rates reflected on the tariff sheets listed on both appendices A and B are based on its cost of service for the twelve months ended January 31, 1992, adjusted for changes which are known and measurable with reasonable accuracy during a nine month adjustment period ending October 31, 1992. However, the rates provided in the tariff sheets listed on appendix B include additional costs associated with adoption of the Financial Accounting Standards Board Statement No. 106. In addition Williston Basin states that the base tariff rates reflected on the tariff sheets listed on appendix C are based on the actual cost of service for the twelve months ended January 31, 1992, adjusted to reflect annualizations of changes occurring during this period.

Williston Basin states that certain tariff modifications are also being proposed in the instant filing. These revised tariff sheets are listed on appendix D and are proposed to be effective June 1, 1992.

Williston Basin states that copies of the filing is being mailed to Williston's jurisdictional customers and state regulatory agencies.

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 Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 11, 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 to the proceeding 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. 92–10823 Filed 5–7–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No 92-18-NG]

Northwest Pipeline Corporation, et al.; Joint Application to Transfer Authority to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of joint application to transfer authority to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a joint application filed on February 12, 1992, by Northwest Pipeline Corporation (Northwest), Cascade Natural Gas Company (Cascade), Northwest Natural Gas Company (Northwest Natural), Washington Natural Gas Company (Washington Natural), and The Washington Water Power Company (Water Power) for the transfer of import authority held by Northwest to Cascade, Northwest Natural, Washington Natural, and Water Power. The requested transfer is a part of Northwest's efforts to "unbundle" its historical sales service to these four customers. Approval of this application would involve no modification or construction of pipeline facilities.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, June 8, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Northwest is incorporated in the State of Delaware and has it principal place of business in Salt Lake City, Utah. It is a wholly-owned subsidiary of Northwest Energy Company (Northwest Energy), a Delaware corporation and holding company whose principal assets are shares in Northwest and Williams Natural Gas Company. Northwest Energy is a wholly-owned subsidiary of The Williams Companies, Inc., a Delaware corporation. Cascade, Northwest Natural, Washington Natural, and Water Power are public utilities and local distribution companies serving customers in the U.S. Northwest. They are not affiliated with each other nor with any other party to this transaction.

Northwest presently imports Canadian natural gas pursuant to DOE/FE Opinion and Order No. 383 (Order 383) issued February 7, 1990, 1 FE ¶ 70,301. Order 383 extended Northwest's authority to import gas at a point on the international border near Kingsgate, British Columbia, from Westcoast Energy Marketing Ltd. (Westcoast Energy), in accordance with a contract referred to as the Kingsgate Gas Sales Agreement dated September 23, 1960, as amended August 15, 1989 (Kingsgate Agreement). The primary term of the Kingsgate Agreement expires October 31, 2004. The maximum contract volume under the Kingsgate Agreement is 151,731 Mcf per day, of which approximately 121,916 Mcf per day is available on a firm basis and approximately 29,815 Mcf per day on an interruptible basis. The gas sold to Northwest under the Kingsgate Agreement currently is exported from Canada under the authority of License GL–131 granted to Westcoast Energy by the National Energy Board (NEB). An amendment to License GL–131 to reflect Westcoast Energy's assignment to Canadian Hydrocarbons Marketing, Inc. (CHM) currently is pending final approval from the Governor in Council.

Northwest has utilized the gas purchased and imported at Kingsgate as its primary source of system supply gas to serve its firm sales requirements. Northwest asserts the availability of Canadian gas supplies for its system supply at Kingsgate also has enabled Northwest to make firm deliveries, by displacement, of storage gas and domestic transportation gas to delivery points located on Pacific Gas Transmission Company's system and on Northwest's Spokane Lateral.

In the transition to becoming an open-access transporter of natural gas, Northwest states that it has finalized the necessary arrangements with those sales customers wishing to convert to firm transportation. Under Assignment Agreements signed September 30, 1991, Northwest and its four largest sales customers, and joint applicants in these proceedings, have agreed to a pro rata assignment, based upon contract demand volumes, of Northwest's major system gas supply purchase contracts, including the Kingsgate Agreement. The Assignment Agreements also amend the 35 percent take-or-pay obligation of the Kingsgate Agreement to provide a minimum take of 42 percent of the firm contract demand allocated to each customer, and include provisions for renegotiation of pricing and volumetric terms that reflect the change in Northwest's status as a gas merchant. Other than these changes the application indicates there will be no substantive change in any facet of the currently authorized import, including the total volumes, gas prices or term of the import.

Applicants request issuance of an order approving the transfer of Northwest's import authorization under Order 383 for up to 152 Mcf per day of gas purchased at Kingsgate under the Kingsgate Agreement, to the assignees, as follows: Washington natural 95,798 Mcf/d, Cascade 33,210 Mcf/d, Water Power 19,160 Mcf/d, and Northwest Natural 3,832 Mcf/d. The requested assignments of import authority will provide each assignee with an import authorization corresponding to the volumes to be assumed by such assignee under the related Assignment Agreement for the Kingsgate Agreement.

In the event that a permanent order cannot or will not issue by April 15, 1992, applicants request the issuance of an emergency interim order by that date, pursuant to 10 CFR 590.403, authorizing the proposed transfer of Northwest's import authorization to the assignees. Applicants argue it is essential that the timing of the import assignments match the timing of the authorizations for Northwest's sales conversion proposal in FERC Docket No. CP92–79, so availability of Kingsgate gas supplies to the assignees will not be interrupted. For the same reason, applicants also request a waiver of the 10 CFR 590.201(b) requirement that applications be filed at least ninety days in advance of the requested action. DOE considered applicants' request but concludes Northwest has failed to identify any emergency circumstances that would justify the issuance of an emergency interim order, or to provide good cause for waiving 10 CFR 590.201(b). All four of Northwest's customers presently hold blanket import authorizations.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import

arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that imports made under these arrangements will be competitive. Parties opposing these arrangements bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 432 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. 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, April 30, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–10854 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–50–NG]

ProGas U.S.A., Inc.; Application for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, Department of energy.

ACTION: Notice of application for blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of energy (DOE) gives notice of receipt on April 10, 1992, of an application filed by ProGas U.S.A., Inc. (ProGas U.S.A.) for blanket authorization to import up to 400 Bcf of Canadian natural gas, and export up to 200 Bcf of natural gas to Canada and up to 200 Bcf of natural gas to Mexico, over a two-year term beginning on the date of first delivery of imports or exports, after June 30, 1992, the date ProGas U.S.A.'s current import authorization expires. ProGas U.S.A. intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and exported and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, June 8, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–094, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: ProGas U.S.A., a Delaware corporation, with its principal place of business in Washington, DC, is beneficially owned by ProGas Limited, a Canadian corporation. ProGas Limited is a purchaser, marketer and exporter of natural gas produced in the Province of Alberta, Canada.

ProGas U.S.A. states that the proposed natural gas imports would be produced in the Provinces of Alberta, British Columbia or Saskatchewan by Canadian producers with which ProGas Limited or ProGas U.S.A. may contract. In its application, the applicant also alleges that the proposed exported natural gas would be over and above the U.S. regional and national needs, and from states which would benefit from the incremental sales of natural gas. ProGas U.S.A. states that the proposed natural gas imports and exports would be purchased pursuant to contractual arrangements that would be the product of arms-length negotiations with an emphasis on competitive prices and contract flexibility. ProGas U.S.A. seeks to import and export natural gas for its own account or as agent on behalf of both suppliers and purchasers, including local distribution companies, pipelines, municipalities, and end-users.

ProGas U.S.A. currently holds a blanket authorization to import Canadian natural gas, issued in DOE Opinion and Order No. 128 on June 9,

1986 (1 ERA ¶ 70,651). This authorization will expire on June 30, 1992. In order to prevent disruption of its importation services, ProGas U.S.A. requests that FE make a determination on its current application by June 30, 1992.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas market place by allowing commercial parties to negotiate freely their own trade arrangements. Parties, especially those that may oppose this application, should comment in their responses on these matters as they related to the requested import and export authority. The applicant asserts that imports made under this arrangement would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing the arrangement bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decisions will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ProGas U.S.A's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. 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, April 30, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–10855 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 24 Through February 28, 1992

During the week of February 24 through February 28, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

University of Utah, 2/25/92, LFA–0179

The University of Utah filed an Appeal from a determination issued by the Office of Energy Research of the DOE (DOE/ER), in response to a request for information submitted under the Freedom of Information Act (FOIA). The University sought documents relating to "cold fusion" research by the Department of Defense and the DOE. In its determination, DOE/ER stated that a search of DOE files revealed no documents responsive to its request. The University challenged the adequacy of the search. In considering the Appeal, the DOE found: (1) DOE/ER's interpretation of the University's request was too narrow and (2) DOE/ER's search was inadequate, since the scope of a search under the FOIA must include all documents obtained by the DOE and within its control at the time of the FOIA request, regardless of whether the documents were created by the DOE, or are currently in the public domain, unless those documents have been previously released by the DOE. Accordingly, the matter was remanded to the Office of Energy Research for a new search in response to the University's request.

Wisconsin Project on Nuclear Arms Control, 2/26/92, LFA–0176

The Wisconsin Project on Nuclear Arms Control filed an Appeal from a determination issued by the Director of the Office of Arms Control and Nonproliferation Technology Support (Director) of the Office of Defense Programs of the DOE in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Director had not adequately explained his decision to withhold in its entirety "U.S. Government Recommendations of Dual-Use Export Controls" (Recommendations) pursuant to Exemption 5 of the FOIA. In particular, the Director must provide a better explanation of what the Recommendations are and how they are used by the government. The DOE also determined that the government had circulated the Recommendations to its negotiating partners. The DOE

instructed the Director to consider whether this circulation constituted release of the document and waiver of the Exemption 5 privileges. Accordingly, the DOE granted the Appeal in part and remanded the matter to the Director to either release a copy of the Recommendations or issue a new determination in accordance with the guidance in the Decision.

Implementation of Special Refund Procedures

Otis Ainsworth, 2/25/92, LEF–0039

The DOE issued a Decision and Order concerning the procedures for the disbursement of $375,000 in crude oil overcharge funds received from Otis Ainsworth. The DOE determined that the funds would be distributed pursuant to the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986).

Refund Applications

Anamax Mining Co., 2/25/92, RF272–41360

The DOE issued a Decision and Order concerning an Application for Refund that Anamax Mining Company (Anamax) filed in the Subpart V crude oil special refund proceeding. Anamax was a partnership of Amax Arizona, Inc., and Anaconda Arizona, Inc., each of which is an equal partner in Anamax. Anaconda Arizona, Inc., is a wholly owned subsidiary of Atlantic Richfield Company, which waived its right, and those of its affilities and subsidiaries, to a refund in the crude oil proceeding by virtue of its claim in the Refiners Escrow. Therefore, the DOE found that because Atlantic Richfield Company owned Anaconda Arizona, Inc., it was a one half partner in Anamax, and it had waived Anamax's right to a refund in the crude oil proceeding. The Application was accordingly denied.

Pester Marketing Co./Pioneer Oil Co., 2/27/92, RF337–1

The DOE issued a Decision and Order concerning an Application for Refund filed by Pioneer Oil Company (Pioneer), a motor gasoline retailer headquartered in Fort Worth, Texas. Pioneer sought a portion of the settlement fund obtained by the DOE as a result of a consent order entered into by Pester Marketing Company. The DOE denied the Pioneer refund claim on the ground that the purchase volume estimate advanced by Pioneer as the basis for its refund claim was unreasonable. The DOE also noted that Pioneer was apparently a spot-purchaser of Pester motor gasoline and that it had failed to rebut the spot-purchaser presumption of non-injury.

Shell Oil Co./Farmland Industries, Inc., 2/25/92, RF315–10179

The DOE issued a Supplemental Order modifying a November 16, 1990 Decision and Order granting a refund to Farmland Industries, Inc. (Farmland) in the Shell Oil Subpart V special refund proceeding. The Farmland refund had been based upon the 40% presumption of injury. However, Farmland, an agricultural cooperative, should have been treated as an end-user in accordance with the presumption of injury for cooperatives established in the Shell proceeding. The DOE, therefore, granted Farmland the difference between the firm's full volumetric allocation for those gallons of Shell products that it resold to its members and the principal refund already granted, or $13,780 plus $5,840 interest. In addition, Farmland elected to rely upon the small claims presumption of injury for the 1,135,991 gallons that it resold to non-members. The DOE has previously determined, however, that an applicant may not rely upon both the end-user and reseller presumptions of injury. Therefore, as the end-user presumption of injury afforded Farmland the greater refund, we denied Farmland a refund based upon the gallons that the cooperative resold to non-members.

Shell Oil Company/Kenneth L. Gratz, et al., 2/25/92, RF315–7124, et al.

The DOE issued a Decision and Order concerning the sixteen (16) Applications for Refund filed in the Shell Oil Company special refund proceeding by Kenneth L. Gratz. This Decision was originally issued as a Proposed Decision and Order on November 13, 1991. Mr. Gratz filed refund claims for 16 service stations at different locations in southern California, claiming to have owned each station for a portion of the refund period. However, Mr. Gratz did not convincingly demonstrate that it was he, and not another party, who purchased refined petroleum products from Shell for these 16 stations during the consent order period. Therefore, the DOE could not find that Mr. Gratz was injured by Shell's alleged overcharges during the consent order period. Accordingly, the Applications for Refund were denied as set forth in the Proposed Decision and Order issued on November 13, 1991.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Carson Oil Company	RF304-3119	02/25/92
Atlantic Richfield Company/General Equities, Inc	RR304-31	02/25/92
Gulf Oil Corporation/Johasky & Donati Gulf	RF300-19557	02/25/92
Gulf Oil Corporation/Sam J. Arcuri Distributor	RF300-13792	02/26/92
Carrillo's Gulf	RF300-13809	
Gulf Oil Corporation/Williams Oil Company, Inc	RR300-44	02/26/92
Peterson Petroleum, Inc	RR300-79	
Inco Express, Inc	RF272-77893	02/25/92
Murphy Oil Corp./Bart Hoard Oil Company, Inc	RF309-1384	02/27/92
Paul Investments, Inc./Hillman Oil Company	RF331-1	02/27/92
Quintana Energy Corp./Exxon Company U.S.A	RF332-6	02/26/92
Reinauer Petroleum Co./Blue Ribbon Tire	RF341-15	02/25/92
Lou's Automotive, Inc	RF341-16	
Texaco Inc./Rusmor Texaco *et al*	RF321-7466	02/25/92
Zapata Gulf Marine Corporation	RF272-24500	02/26/92
Zapata Haynie Corporation	RF272-61177	
Zapata Haynie Corporation	RD272-61177	
Zapata Corporation	RF272-67923	

Dismissals

The following submissions were dismissed:

Name	Case No.
52 Shell Pantry	RF315-1610
Davison County	RF272-87026
J.J. Ferguson Sand & Gravel	RF272-9456
Jack's Texaco #2	RF321-12145
K&D Service	RF321-6094
Metropolitan Asphalt Corp	RD272-25153
Metropolitan Asphalt Corp	RF272-25153
Morris Shell Service	RF315-1420
Scott County, MN	RF272-85754
Tom's Shell Service	RF315-1425

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: May 1, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-10856 Filed 5-7-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Proposed Transmission Rate for the Phoenix Area

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Pacific Northwest-Pacific Southwest Intertie Project Firm and Nonfirm Transmission Rate Adjustment.

SUMMARY: The Western Area Power Administration (Western) is proposing rate adjustments (Proposed Rates) for firm and nonfirm transmission service for the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie). The power repayment study (PRS) indicates that the Proposed Rates for firm and nonfirm transmission service are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure which will be distributed to all interested parties. The Proposed Rates for firm and nonfirm transmission service are expected to become effective October 1, 1992.

The FY 1991 PRS indicates the need for a Proposed Rate of $7.85 per kilowatt year (kW-yr) for firm transmission service and a rate of 1.49 mills per kilowatthour (kWh) for nonfirm transmission service. This represents an increase of 76.0 percent over the existing firm transmission service rate of $4.46 per kW-yr and a 49.0-percent increase over the existing nonfirm transmission service rate of 1.0 mill per kWh.

Because of the significant increase over the existing rate, Western proposes the adoption of a two-step firm transmission service rate. The first step of the Proposed Rate for firm transmission service would be for $5.22 per kW-yr and would become effective on October 1, 1992. The second step of the Proposed Rate for firm transmission service would be for $8.17 per kW-yr and would become effective on October 1, 1995.

The nonfirm transmission service rate would remain at the existing rate of 1.00 mill per kWh until October 1, 1995, at which time the rate would increase to 1.55 mills per kWh.

The existing firm transmission service rate of $4.46 per kW-yr or $0.372 per kilowatt month (kW-mo) and the nonfirm transmission service rate of 1.00 mill per kWh were approved on April 7, 1976, by the Deputy Assistant Secretary for Land and Water Resources, U.S. Bureau of Reclamation, and were put into effect on May 1, 1976.

The following table compares the existing rates with the proposed stepped rates:

STEP ONE RATE COMPARISON

Type of service	Existing rates May 1, 1976 thru September 30, 1992	Proposed rates October 1, 1992	Percent change (percent)
Firm Transmission Service.	$4.46 per kW-yr.	$5.22 per kw-yr.	17.0
Nonfirm Transmission Service.	1.00 mill per kWh.	1.00 mill per kWh.	0

STEP TWO RATE COMPARISON

Type of service	Existing rates October 1, 1992 thru September 30, 1995	Proposed rates October 1, 1995	Percent change (percent)
Firm Transmission Service.	$5.22 per kW-yr.	$8.17 per kW-yr.	56.5
Nonfirm Transmission Service.	1.00 mill per kWh.	1.55 mill per kWh.	55.0

In addition to the proposed rate adjustments for the AC Intertie, Western is also planning rate adjustments for the Parker-Davis Project (P-DP) transmission system. Western is in the process of developing Alternative Transmission Service Rates that would incorporate the transmission rates of the AC Intertie and the P-DP. The Proposed Rates for Alternative Transmission Service and the methodology used in their derivation will be discussed in more detail in the AC Intertie and P-DP rate brochures and at the customer meetings. Based upon customer comments and input, Western will

implement either the Proposed Rates for AC Intertie transmission service rates or the Alternative Transmission Service.

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend for approval the Proposed Rates to the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary), U.S. Department of Energy (DOE).

DATES: The consultation and comment period will begin with the publication of this notice in the **Federal Register** and will end not less than 90 days later, or August 6, 1992, whichever occurs later. A public information forum will be held at 1:30 p.m. on June 19, 1992, at the Omni Adams Hotel, 111 North Central Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 1:30 p.m. on June 30, 1992, also at the Omni Adams Hotel.

Written comments should be received by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005.

A copy of the written comments should also be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Eiler, Assistant Area Manager for Power Marketing, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2650.

SUPPLEMENTARY INFORMATION: Transmission rates for the AC Intertie are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); and the Reclamation Act of 1902 (32 U.S.C. 388, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and section 8 of the Act of August 31, 1964, (16 U.S.C. 837g).

By amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates for transmission service are and will be available for inspection and copying at the Phoenix Area Office, located at 615 South 43rd Avenue, Phoenix, AZ 85005.

REGULATORY FLEXIBILITY: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the AC Intertie transmission service rate adjustment are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the AC Intertie transmission service rates are of limited applicability, no flexibility analysis is required.

DETERMINATION UNDER EXECUTIVE ORDER 12291: DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291 (46 FR 13193), published February 19, 1981. In addition, Western has an exemption from sections 3, 4, and 7 of said Order 12291 and, therefore, will not prepare a regulatory impact statement.

PAPERWORK REDUCTION ACT OF 1980: The paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rules for the interested public to participate with the Power Marketing Administration in the development of rates. Nevertheless, this is at their sole selection. There is no requirement that members of the public participating in the development of the AC Intertie Transmission Service Rates supply information about themselves to the Government. It follows that the AC Intertie transmission service rates are exempt from the Paperwork Reduction Act.

ENVIRONMENTAL EVALUATION: In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 FR parts 1500 through 1508), and DOE guidelines published at 52 FR 47662 on December 15, 1987, Western conducts environmental evaluations of the AC Intertie transmission service rate adjustments and develops the appropriate level of environmental documentation prior to the implementation of any rate adjustment.

Issued at Golden, Colorado, April 27, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92–10857 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Parker-Davis Project—Proposed Firm Power Rate and Firm and Nonfirm Transmission Service Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Parker-Davis Project Power Rate and Firm and Nonfirm Transmission Rate Adjustments.

SUMMARY: The Western Area Power Administration (Western) is proposing rate adjustments (Proposed Rates) for firm power and firm and nonfirm transmission service for the Parker-Davis Project (P–DP). The power repayment study and other analysis indicate that the Proposed Rates for firm power and firm and nonfirm transmission service are necessary to provide sufficient revenue to pay all annual costs (including interest expense), plus repayment of required investment within the allowable time period. The rate impacts are detailed in a rate brochure to be distributed to all interested parties. The Proposed Rates for firm power and firm and nonfirm transmission service are expected to become effective October 1, 1992.

The Proposed Rate for firm power is based on a composite rate of 11.43 mills per kilowatthour (kWh). This composite

rate consists of an energy charge of 5.72 mills per kWh and a capacity charge of $2.51 per kilowatt-month (kW-mo). The Proposed Rate for firm transmission service of $14.76 per kilowatt-year (kW-yr) and the Proposed Rate for nonfirm transmission service of 2.81 mills per kWh are based on revenue required to pay all transmission system costs. The P-DP Proposed Rate for transmission service for Salt Lake City Area Integrated Projects (SLCA/IP) power customers is $7.38 per kW-season ($1.23 per kW-month) which is one-half of the P-DP Proposed Rate for firm transmission service of $14.76 per kW-yr.

The existing P–DP firm power composite rate is 9.03 mills per kWh, comprised of an energy charge of 4.52 mills per kWh and capacity charge of $1.98 per kW-mo. The existing P-DP firm transmission service rate is $8.20 per kW-yr ($0.68 per kW-mo) and the existing nonfirm transmission service rate is 1.50 mills per kWh. The existing P-DP transmission service rate for transmission service for the SLCA/IP is $4.10 per KW-season ($0.68 per kW-mo).

The Deputy Secretary, U.S. Department of Energy (DOE), approved the existing rate schedules on an interim basis on August 22, 1990, and the Federal Energy Regulatory Commission (FERC) confirmed and approved the rate schedules on a final basis on November 15, 1990. These existing rate schedules were placed in effect on October 1, 1990.

The following table compares the P-DP existing rates with the Proposed Rates:

Type of service	Existing rates October 1, 1990 thru September 30, 1992	Proposed rate October 1, 1992	Percent change
Composite Rate.	9.03 mills per kWh.	11.43 mills per kWh.	26.6
Energy Rate.	4.52 mills per kWh.	5.72 mills per kWh.	26.5
Capacity Rate.	$1.98 per kW-mo.	$2.51 per kW-mo.	26.8
Firm Transmission Service.	$8.20 per kW-yr.	$14.76 per kW-yr.	80.0
Nonfirm Transmission Service.	1.50 mills per kWh.	2.81 mills per kWh.	87.3
Transmission Service for SLCA/IP.	$4.10 per kW-season.	$7.38 per kW-season.	80.0

In addition to the proposed rate adjustments for the P-DP, Western is also planning rate adjustments for the Pacific Northwest-Pacific Southwest Intertie Project (AC Intertie). Western is in the process of developing Alternative Transmission Service Rates that would incorporate the transmission rates of the AC Intertie and the P-DP. The Proposed Rates for Alternative Transmission Service and the methodology used in their derivation will be discussed in more deatail in the AC Intertie and the P-DP rate brochures and at the customer meetings. Based upon customer comments and input, Western will implement either the Proposed Rates for P-DP Transmission Service or the Alternative Transmission Service.

Since the Proposed Rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustment, as cited below, both a public information forum and a public comment forum will be held. After review of public comments, Western will recommend the Proposed rates for approval on an interim basis by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the DOE.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end not less that 90 days later, or August 6, 1992, whichever occurs later. A public information forum will be held at 9 a.m. on June 19, 1992, at Omni Adams Hotel, 111 North Central Avenue, Phoenix, Arizona. A public comment forum at which Western will receive oral and written comments will be held at 9 a.m. on June 30, 1992, at the Omni Adams Hotel.

Written comments should be received by Western by the end of the consultation and comment period to be assured consideration and should be sent to the address below.

ADDRESSES: Written comments may be sent to: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2453.

A copy of the written comments should also be sent to the address below.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Eiler, Assistant Manager for Power Marketing, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352–2650.

SUPPLEMENTARY INFORMATION: Power and transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 29, 1954 (ch. 241, 68 Stat. 143).

By amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of DOE delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the FERC.

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR Part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

AVAILABILITY OF INFORMATION: All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the Proposed Rates for firm power and firm and nonfirm transmission service are and will be made available for inspection and copying at the Phoenix Area Office, located at 615 South 43rd Avenue, Phoenix, AZ 85005.

REGULATORY FLEXIBILITY: Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the initiation of the P-DP firm power and firm and nonfirm transmission service rate adjustments are related to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rules of particular applicability relating to rates or services are not considered rules within the meaning of the act. Since the P-DP firm power and firm and nonfirm transmission service rates are of limited applicability, no flexibility analysis is required.

DETERMINATION UNDER EXECUTIVE ORDER 12291: DOE has determined that this is not a major rule within the meaning of the criteria of section 1(b) of the Executive Order 12291 (46 FR 13193), published February 19, 1981. In addition, Western has an exemption from sections 3, 4, and 7 of said Order 12291 and, therefore, will not prepare a regulatory impact statement.

PAPERWORK REDUCTION ACT OF 1980: The Paperwork Reduction Act of 1980

(44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity is provided in the proposed rules for the interested public to participate with the Power Marketing Administration in the development of rates. Nevertheless, this is at their sole selection. There is no requirement that members of the public participating in the development of the P-DP firm power and firm and nonfirm transmission service rates supply information about themselves to the Government. It follows that the P-DP firm power and firm and nonfirm transmission service rates are exempt from the Paperwork Reduction Act.

ENVIRONMENTAL EVALUATION: In compliance with the National Environmental Policy Act of 1969, Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508), and DOE guidelines published at 52 FR 47662 on December 15, 1987, Western conducts environmental evaluations of the P-DP firm power and firm and nonfirm transmission service rate adjustments and develops the appropriate level of environmental documentation prior to the implementation of any rate adjustment.

Issued at Golden, Colorado, April 27, 1992.

William H. Clagett,

Administrator.

[FR Doc. 92–10858 Filed 5–7–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OAR–FRL–4131–6]

State Implementation Plans for Nonattainment Areas for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice announcing findings of failure to submit required State Implementation Plans (SIP's).

SUMMARY: The EPA gives notice that it made a finding, pursuant to sections 179(a)(1) and 110(k) of the Clean Air Act (Act) as amended in 1990 (Pub. L. No. 101–549, November 15, 1990), 42 U.S.C. 7509(a)(1) and 7410, for each State listed in table A. The EPA has determined that each State has failed to submit an implementation plan, plan element, or "complete plan" [a submission satisfying the minimum criteria established under section 110(k)(1)(A)] for particulate matter less than or equal to 10 microns (PM–10) as required under the provisions of the Act. This notice addresses the requirement under section 189(a)(2)(A) of the Act that each State shall submit the plan required under section 189(a)(1) within 1 year of the date of the enactment of the Clean Air Act Amendments of 1990 (i.e., by November 15, 1991) for areas designated nonattainment under section 107(d)(4), except that the provision required under section 189(a)(1)(A) relating to new source review requirements shall be submitted no later than June 30, 1992.

This notice announces the findings made in December 1991 via letters sent by the EPA Regional Administrators to 11 States notifying each of its failure to make a required PM–10 SIP submittal or its failure to submit a complete PM–10 SIP submittal. The letters triggered the 18-month timeclock for the mandatory application of sanctions under section 179(a) and the 24-month timeclock for promulgation of a Federal implementation plan under section 110(c)(1).

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Andrew M. Smith, Air Quality Management Division (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5398 or FTS 629–5398. For questions related to a specific area, please contact the appropriate Regional Office listed below.

Regional offices	States
● Susan Studlien, Chief, Air Programs Branch, EPA Region I (APB–2311), JFK Federal Building, Boston, Massachusetts 02203–2211, (617) 565–3221; FTS 835–3221.	Connecticut.
● William S. Baker, Chief, Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278, (212) 264–2517; FTS 264–2517.	Puerto Rico.
● Marcia Spink, Chief, Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107, (215) 597–9075; FTS 597–9075.	Pennsylvania.
● Stephen H. Rothblatt, Chief, Air and Radiation Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2211; FTS 353–2211.	Illinois, Indiana.
● Gary Gulezian, Chief, Air Toxics and Radiation Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 353–8559; FTS 353–8559.	Michigan.
● Douglas M. Skie, Chief, Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—Suite 500, Denver, CO 80202–2405, (303) 293–1750; FTS 330–1750.	Colorado, Montana.
● David L. Calkins, Chief, Air Programs Branch, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1219; FTS 484–1219.	Arizona, California.
● George Abel, Chief, Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–1275; FTS 399–1275.	Idaho.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 1991 (56 FR 11101), EPA announced those areas of the country designated nonattainment for PM–10 by operation of law upon enactment of the 1990 Amendments [see sections 107(d)(4)(B) and 107(d)(2) of the Act]. On August 8, 1991 (56 FR 37654), EPA published a notice correcting some of these designations and further explaining EPA's rationale for the designations. The EPA also announced on March 15, 1991 (56 FR 11101) that all of the areas designated as nonattainment for PM–10 by operation of law upon enactment of the 1990 Amendments were classified as moderate nonattainment areas at that time [see section 188(a)]. Those States containing areas designated nonattainment and classified as moderate for PM–10 upon enactment of the Amendments were required to adopt and submit to EPA a SIP for those areas by November 15, 1991 [see section 189(a)].

As a general matter, all of these initial moderate areas are required to submit a SIP meeting the requirements for nonattainment areas identified in section 172 of the Act and the requirements specific to PM–10 in subpart 4 of Part D. In particular, section 189(a) of the Act required that all of the initial moderate PM–10 nonattainment areas submit a SIP by November 15, 1991, which includes the following:

1. Either a demonstration (including air quality modeling) that the plan will provide for attainment by December 31, 1994 or a demonstration that attainment by that date is impracticable [see section 189(a)(1)(B)].

2. Provisions to assure that reasonably available control measures (RACM) (including reasonably available control technology—RACT) for the control of PM–10 are implemented by December 10, 1993 [see section 189(a)(1)(C)].[1]

In addition, States are required to submit a new source permit program meeting the requirements of Part D, Title I of the Act, requiring permits for the construction and operation of new and modified major stationary sources of PM–10 (including, as appropriate, PM–10 precursors) [see section 189(a)(1)(A) and 189(e)]. A SIP revision meeting this requirement is due by June 30, 1992 for all of the initial moderate PM–10 nonattainment areas [see section 189(a)(2)(A)].

The Act establishes specific consequences if a State fails to meet certain requirements. Of particular relevance here are sections 179 and 110(k). Section 179 contains the provisions for mandatory application of sanctions. Section 179(a) sets forth the various findings upon which application of a sanction is based. The findings that, for a nonattainment area, a State has failed to submit a plan or one or more elements of a plan required under the Act or has failed to make a submission for such an area that meets the minimum completeness criteria established under section 110(k) [see 40 CFR part 51, appendix V, as amended by 56 FR 42216 (August 26, 1991)] are the findings relevant to this announcement.

Today, EPA is announcing its previous determination that nine States have failed to submit a required plan or plan element for one or more of the initial moderate PM–10 nonattainment areas in those States and that two States have failed to submit a required plan or plan element for such areas satisfying the completeness criteria. Under section 179(a), the Administrator must impose one of the sanctions specified in section 179(b) 18 months after the finding unless EPA determines within that 18-month period that a complete submittal has been made. If the State still has failed to make a complete submittal after 24 months, then EPA must impose both sanctions specified in section 179(b). Finally, section 110(c)(1) has also been amended to require that the Administrator promulgate a Federal implementation plan within 2 years after a finding that a State has failed to submit a required plan element or plan or finding that a required plan or plan element does not satisfy the completeness criteria.

[1] Note that some of the general nonattainment plan provisions specified in section 172(c) are inextricably related to the provisions specified in the PM–10 subpart and due on November 15, 1991. For example, section 172(c)(1) (requiring provisions to implement RACM including RACT) must be read together with the section 189(a)(1)(C) RACM requirement. Similarly, a comprehensive, accurate, current inventory of actual emissions [section 172(c)(3)] is integral to an adequate demonstration [section 189(a)(1)(B)]. These general nonattainment provisions must be reflected in or subsumed within the relevant PM–10 specific submittals due November 15, 1991.

II. States for Which EPA is Making a Finding

Arizona

On August 30, 1991, a letter was sent from Region IX's Air Division Director to Arizona's Director of the Office of Air Quality explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the Act, that Arizona had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Nogales and Douglas PM–10 nonattainment areas.

California

On August 30, 1991, a letter was sent from Region IX's Air Division Director to the Director of the California Air Resources Board explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the Act, that California had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Searles Valley, San Joaquin Valley, Imperial Valley, and Owens Valley moderate PM–10 nonattainment areas. The EPA subsequently received PM–10 submittals for the San Joaquin Valley and Owens Valley moderate PM–10 nonattainment areas from the California Air Resources Board. The San Joaquin SIP submittal was dated December 24, 1991, and the Owens Valley submittal was dated January 9, 1992. The EPA is currently reviewing the San Joaquin and Owens Valley plans for completeness pursuant to section 110(k)(1). If EPA finds the plan complete, then the State's deficiency under section 179(a)(1) for these areas will be corrected, and the sanctions process initiated for these areas pursuant to section 179(a)(1) will be stopped at that time.

Colorado

On November 1, 1991, a letter was sent from Region VIII's Regional Administrator to Colorado's Governor explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the amended Act, that Colorado had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Aspen, Denver, Canon City, Lamar, Pagosa Springs, and Telluride moderate PM–10 nonattainment areas.

Connecticut

On October 1, 1991, a letter was sent from Region I's Director of the Air, Pesticides, and Toxics Management Division to Connecticut's Department of Environmental Protection explaining the procedure EPA intended to use in addressing any State failure to submit a SIP for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the amended Act, that Connecticut had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the New Haven moderate PM–10 nonattainment area.

Idaho

On August 21, 1991, a letter was sent from Region X's Regional Administrator to the Administrator of the Division of Environmental Quality of Idaho's Department of Health and Welfare explaining the procedure EPA intended to use in addressing any State failure to submit PM–10 SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. Additionally, on September 9, 1991, the Chief of EPA's Region X Air and Radiation Branch sent a letter to the Acting Chief of the Bureau of Air Quality of Idaho's Department of Health and Welfare, further explaining the procedure. On December 18, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the amended Act, that Idaho had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Pinehurst, Pocatello, and Sandpoint moderate PM–10 nonattainment areas.

Illinois

On August 16, 1991, the EPA received revisions to the Illinois SIP for the McCook, Lake Calumet, and Granite City moderate PM–10 nonattainment areas. In that submittal, the State requested parallel processing of the draft rules. The submittal for these PM–

10 nonattainment areas was reviewed for completeness and, on October 3, 1991, EPA denied the request for parallel processing because certain required components were absent or provided insufficient detail. On October 9, 1991, EPA received additional draft proposed rules from the Illinois Division of Air Pollution Control for the Granite City moderate PM–10 nonattainment area. On October 10, 1991, a letter was sent from Region V's Air and Radiation Division Director to the Manager of the Illinois Division of Air Pollution control, explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. Illinois did not submit a complete SIP revision for the McCook, Lake Calumet, and Granite City moderate PM–10 nonattainment areas in response to the October 10, 1991 letter. Therefore, on December 17, 1991, EPA made a finding, pursuant to sections 110(k) and 179(a) of the Act, that the August 16, 1991 and the October 9, 1991 submittals were incomplete and, therefore, Illinois failed to submit a required complete PM–10 SIP for the McCook, Lake Calument, and Granite City PM–10 nonattainment areas.

Indiana

On October 8, 1991, a letter was sent from Region V's Air and Radiation Division Director to Indiana's Acting Assistant Commissioner, Office of Air Management, explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 17, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the Act, that Indiana had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Lake County and Vermillion County moderate PM–10 nonattainment areas.

Michigan

On October 1, 1991, a letter was sent from Region V's Air and Radiation Division Director to the Director of Michigan's Division of Air Quality, Department of Natural Resources, explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On November 19, 1991, EPA received revisions to the Michigan SIP for the Wayne County PM–10 nonattainment area. The EPA reviewed the submittal for completeness pursuant to section 110(k)(1) of the amended Act and found that the submittal did not contain many of the required elements, but rather consisted primarily of a commitment to adopt the required elements. The EPA does not believe that this submittal is appropriate for a conditional approval under section 110(k)(4). Therefore, on December 17, 1991, EPA sent a letter to the State of Michigan finding, pursuant to sections 110(k) and 179(a), that Michigan failed to submit a required complete PM–10 SIP for the Wayne County moderate PM–10 nonattainment area.

Montana

On November 1, 1991, a letter was sent from Region VIII's Regional Administrator to Montana's Governor explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the amended Act, that Montana had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Butte, Columbia Falls, and Missoula moderate PM–10 nonattainment areas.

Pennsylvania

On October 11, 1991, a letter was sent from Region III's Air, Radiation, and Toxics Division Director to the Director of Pennsylvania's Bureau of Air Quality Control explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the amended Act, that Pennsylvania had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Liberty Borough moderate PM–10 nonattainment area.

Puerto Rico

On September 26, 1991, a letter was sent from Region II's Air and Waste Management Division Director to the Chairman of Puerto Rico's Environmental Quality Board explaining the general procedure EPA intended to follow in addressing any State failure to submit SIP's for the initial moderate PM–10 nonattainment areas by the statutory deadline. On December 16, 1991, EPA initiated this process by finding, pursuant to section 179(a)(1) of the Act, that Puerto Rico had failed to submit a SIP to meet the statutory deadline of November 15, 1991 for the Guaynabo moderate PM–10 nonattainment area.

IV. Conclusion

The EPA has made findings under section 179(a)(1) of the Act that the States listed in Table A failed to submit a plan, plan element, or a complete plan as required under section 189(a)(2) and 110(k) of the Act.

Authority: 42 U.S.C. 7410(k), 7410(m), 7502, 7509(a), 7509(b), 7513, 7513a(a), and 7601.

Dated: May 4, 1992.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

TABLE A.—STATES FOUND TO HAVE FAILED TO SUBMIT SIP'S OR COMPLETE SIP'S FOR THE FOLLOWING RESPECTIVE MODERATE PM–10 NONATTAINMENT AREAS [1]

State	Area of concern
Arizona	Douglas, [2] Nogales.
California	Imperial Valley, Owens Valley, San Joaquin Valley, Searles Valley.
Colorado	Aspen, Denver, Canon City, Lamar, Pagosa Springs, Telluride.
Connecticut	New Haven.
Idaho	Pinehurst, Pocatello, Sandpoint.
Illinois	McCook, [3] Lake Calumet, [4] Granite City.
Indiana	Lake County, Vermillion County.
Michigan	Wayne County.
Montana	Butte, Columbia Falls, Missoula.
Pennsylvania	Liberty Borough [5]
Puerto Rico	Guaynabo.

[1] For efficiency, the full legal boundaries for the areas addressed in today's notice have not been listed. The references to areas in this notice are general and intended to operate as substitutes for the full legal boundaries. The full legal boundaries are set forth at 56 FR 56694, 56709–56858 (November 6, 1991), in which EPA formally codified the designations and classifications for each of the initial PM–10 moderate nonattainment areas.

[2] The full legal boundaries for the "Paul Spur Douglas planning area" are listed in the November 6, 1991 **Federal Register1** notice under Cochise County (see 56 FR 56719). For PM–10 SIP preparation and submittal purposes, the State has treated the area as two distinct initial moderate PM–10 nonattainment areas (Paul Spur and Douglas). In today's notice, EPA is announcing its determination that the State of Arizona has failed to submit a required PM–10 SIP for the Douglas portion of this planning area.

[3] The full legal boundaries for this area of concern are listed in the November 6, 1991 **Federal Register** notice under Cook County as item a, Lyons Township (see 56 FR 56753).

[4] The full legal boundaries for this area of concern are listed in the November 6, 1991 **Federal Register** notice under Cook County as item b (see 56 FR 56753).

[5] The full legal boundaries for this area of concern are listed in the November 6, 1991 **Federal Register** notice under Allegheny County (see 56 FR 56823).

[FR Doc. 92–10816 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-4131-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 20, 1992 Through April 24, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. DCOE–E50006–NC Rating EC2, Hobucken Bridge Replacement, Atlantic Intracoastal Waterway Bridge (AIWW), Implementation, Pamlico County, NC.

Summary: EPA has environmental concerns about mitigating the unavoidable wetland losses associated with the project's construction. The noted mitigation plan to replace these resources seems satisfactory, however, EPA would like to see this assumption verified by additional information provided in the final document.

ERP No. D–FAA–F51040–IN Rating EC2, Indianapolis International Airport Master Plan Development, Construction and Operation, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan, Approval, Funding and Section 404 Permit, Marion County, IN.

Summary: EPA requested that additional information be included in the final EIS concerning a wetlands mitigation plan, air quality, water quality and noise impacts.

ERP No. D–FHW–E40742–NC Rating EC2, I–85 Greensboro Bypass Study Area Transportation Improvement, I–85 South of Greensboro to I–40/85 east of Greensboro, Funding, Possible Section 404 Permit, City of Greensboro, Guilford County, NC.

Summary: EPA believes that either the existing corridor or the GRAND/85 build alternative are environmentally preferred. EPA requested that the final EIS contain addition information concerning the build on existing corridor, stream channel relocation, reestablishment of vegetation, wetland avoidance or mitigation, preservation of hardwood or forested areas, and impacts of hazardous waste sites.

ERP No. D–GSA–B81006–MA Rating EC2, New United States Courthouse in Boston, Construction and Operation, Site Selection, Fan Pier in the Fort Point Channel, Boston, MA.

Summary: EPA expressed concern about secondary and cumulative impacts, and air quality impacts.

ERP No. D–SFW–H61020–IA Rating EC2, Brushy Creek State Recreation Area (BCSRA) Dam and Lake Project, Implementation, Funding, NPDES Permit and Section 404 Permit, Des Moines River, Several Counties, IA.

Summary: EPA had environmental concerns with the project because impacts from point and non-point sources were not adequately addressed in the document.

ERP No. D–USA–K11050–HI Rating LO, Strategic Target System Program, Launching of nonnuclear payloads from the Kauai Test Facility at the Pacific Missile Test Facility, Island of Kauai, HI.

Summary: EPA expressed a lack of objection to the proposed project and encouraged the Department of Defense to implement pollution prevention measures for proposed and ongoing activities at the test facility.

Final EISs

ERP No. F–AFS–J02022–00

Pike and San Isabel National Forests/Comanche and Cimarron National Grasslands Oil and Gas Exploration and Development, Leasing, Several Counties, CO and KS.

Summary: EPA has environmental concerns with this final EIS, because it is unclear to what level analysis was performed in terms of data quantity, and consistency. Also, EPA was unable to determine whether any field verification of the referenced extrapolations of data has been conducted or instead will be performed at a later stage. EPA recommends that the affected lease be issued with the stipulation that adequate environmental baseline data, as determined by validation monitoring, be collected prior to submitting the Application of Permit to Drill (APD).

ERP No. F–AFS–J60008–WY

Teton Village Federal Tract/Diamond L Ranch Land Exchange, Special Use Permits, Bridger-Teton National Forest, Teton County, WY.

Summary: EPA has no objections to the preferred alternative.

ERP No. F–BOP–D81021–WV

Beckley Federal Correctional Institution, Construction and Operation, Raleigh County, WV.

Summary: EPA expressed concern about the alternatives analysis and believes that it was insufficient considering the tiered approach would have been more appropriate. The final EIS lacked a detailed comparison of other reasonable alternatives with lesser impacts (primarily loss of terrestrial habitat).

ERP No. F–FRC–C05144–NJ

Mount Hope Pumped Storage Hydroelectric Project, Construction, Operation and Maintenance, License Section 404 Permit, Morris County, NJ.

Summary: EPA believes that implementation of the applicants' proposal with FERC staff-recommendations supplemental mitigation measures adequately addresses EPAs's concerns. EPA recommends that the license be conditioned to include all of the mitigation measures recommended by FERC staff.

ERP No. F–UAF–K11048–CA

George Air Force Base (AFB) Disposal and Reuse, Implementation, San Bernardino, CA.

Summary: EPA objected to this documents' continued lack of specificity regarding cumulative impacts and potential mitigation measures. EPA recommended that the Record of Decision commit to supplement NEPA documentation to focus on the environmental issues related to the actual proposed reuse, including conformance with environmental regulations.

Dated: May 5, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–10845 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5076. Availability of Environmental Impact Statements Filed April 27, 1992 Through May 01, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920140, FINAL EIS, AFS, MT, Upper Ruby Cattle and Horse Allotment Management Plan, Centennial Divide Road No. 100 Reconstruction and management Area Designation for portions of the Ruby River, Implementation, Beaverhead National Forest, Sheridan, Due: June 08, 1992, Contact: Mark Petroni (406) 842–5432.

EIS No. 920141, SECOND FINAL EIS (USA, UT, Dugway Proving Ground Biological Aerosol Test Facility (BATF) Additional Information, New Alternative, Consolidated Life Science Test Facility (LSTF), Construction and Operation, Baker Laboratory, Tooele County, UT, Due: June 08, 1992, Contact: Ms. Melynda Petrie (801) 831–2116.

EIS No. 920142, FINAL EIS, FHW, FL, US 1/FL–5 Upgrading, Abaco Road on Key Largo to Card Sound Road, Updated Information, Funding and Coast Guard Bridges, NPDES and COE Permits, Dade and Monroe Counties, FL, Due: June 08, 1992, Contact: J. R. Skinner (904) 681–7223.

EIS No. 920143, FINAL EIS, AFS, CA, CASA-Guard Timber Sale, Implementation, Sequoia National Forest, Cannell Meadow Ranger District, Tulare and Kern Counties, CA, Due: June 08, 1992, Contact: Susan Porter (209) 784–1500.

EIS No. 920144, DRAFT EIS, FHW, MN, I–494 Reconstruction Corridor Study, I–394 on the west to the Minnesota River, Funding and Section 404 Permit, Hennepin County, MN, Due: June 22, 1992 Contact: Stephen Bahler (612) 290–3259.

EIS No. 920145, DRAFT EIS, FHW, AK, Third Street Widening Project, Improvement, Old Steese Highway and Hamilton Avenue, Funding and Right-of-Way Acquisition, Fairbanks North Star Borough, AK, Due: June 22, 1992, Contact: Stephen A. Moreno (907) 586–7428.

EIS No. 920146, DRAFT EIS, FAA, TN, Memphis International Airport, Construction and Operation, Runway 18L–36R, Relocation of Swinnea Road, portion of Winchester Road and Shelby Drive, Airport Layout Plan (ALP) Approval, Funding and section 404 Permit, Shelby County, TN, Due: June 22, 1992, Contact: Peggy S. Kelly (901) 544–3495.

EIS No. 920147, FINAL EIS, FHW, MT, I–15/North Helena Valley Interchange Improvements, I–15 to Montana Avenue, Construction and Funding, Lewis and Clark County, MT, Due: June 15, 1992, Contact: Dale Paulson (406) 449–5310.

EIS No. 920148, FINAL EIS, ICC, OH, Indiana and Ohio Railroad Line, Construction and Operation extending from the northern border at Brecon to the southern city limits of Mason, Right-of-Way, Butler, Warren, and Hamilton Counties, OH, Due: June 08, 1992, Contact: Elaine K. Kaiser (202) 927–7684.

EIS No. 920149, FINAL EIS, GSA, GA, Internal Revenue Service, Service Center Annex Consolidation, Construction, Chamblee, GA, Due: June 08, 1992, Contact: Alice Coneybeer (404) 331–1831.

EIS No. 920150, DRAFT EIS, AFS, AK, Alaska Pulp Corporation (APC) Long-Term Timber Sale Contract, Implementation, Southeast Chichagof Project Area, Tongass National Forest, AK, Due: June 22, 1992, Contact: Gordan Anderson (907) 747–6671.

EIS No. 920151, FINAL EIS, MMS, AL, CA, FL, LA, NC, AK, DE, GA, MD, NJ, NY, RI, TX, WA, OR, SC, VA, Mid 1992 thru Mid 1997 Outer Continental Shelf (OCS) Comprehensive Gas and Oil Resources Management Program, Schedule of Sales Adoption, Leasing, Offshore Coastal Counties of AL, AK, CA, DE, FL, GA, LA, MD, NJ, NY, NC, OR, RI, SC, TX, VA and WA, Due: June 08, 1992, Contact: Debra Purvis (703) 787–1674.

EIS No. 920152, FINAL EIS, FHW, CA, San Joaquin Hills Transportation Corridor Improvements, CA–73 Extension between I–5 in San Juan Capistrano City to Jamboree Road in Newport Beach City, Funding and Section 404 Permit, Orange County, CA, Due: June 08, 1992, Contact: James J. Bednar (916) save1310.

Amended Notices

EIS No. 910401, DRAFT EIS, FAA, MN, Minneapolis-St. Paul International Airport, Runway 4–22 Extension, Funding, Wold-Chamberlain Field, Hennepin County, MN, Due: May 29, 1992 Contact: Glen Orcutt (612) 725–7221 Published FR: 11–15–91 Review period extended.

EIS No. 920082, DRAFT EIS, FTA, CA, San Francisco International Airport Extension, Transportation Improvements, Bay Area Rapid Transit District (BART) Funding, San Mateo County, CA, Due: May 18, 1992, Contact: Robert Hom (415) 744–3116. Published FR –03–13–92– Review period extended.

Dated: May 5, 1992.

William D. Dickerson,

Deputy Director, Officer of Federal Activities.

[FR Doc. 92–10844 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–My

[OPP–42068A; FRL–4051–8]

Missouri Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amended Missouri State Plan.

SUMMARY: In the Federal Register of December 24, 1991, EPA announced its intent to approve the amended Missouri Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. EPA hereby announces final approval of this amended Plan.

ADDRESSES: Copies of the amended Missouri Plan are available for review at the following locations during normal business hours:

1. Division of Plant Industries, Missouri Department of Agriculture, 1616 Missouri Boulevard, Jefferson City, MO 65101.
2. Toxics and Pesticides Branch, U. S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: David Ramsey, (314) 636–5223.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 24, 1991 (56 FR 66632), EPA announced its intent to approve the Missouri Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides. Interested persons were given 30 days to comment. No comments were received. EPA therefore grants final approval of the amended Missouri Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides.

Dated: April 28, 1992.

Morris Kay,

Regional Administrator, Region VII.

[FR Doc. 92–10819 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4131–2]

Hazardous Waste Management, Inc.; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response cost at the Hazardous Waste Management, Inc. site in Southlake, Texas with the following parties:

Amrex Investment Company
Armatek, Inc.
Ashland Chemical, Inc.
Austin Pathology Associates
Brackenridge Hospital
Cabell's Dairies
Chemical Reclamation Services, Inc.
Clinical Pathology Laboratories, Inc.
Cook Fort Worth Children's Medical Center
Data General Corporation
Exide Corporation (for Dixie Metals Company)
Fenton environmental Technologies, Inc.

Findley Adhesives, Inc.
Gene Screen, Inc.
Highland Medical Center
Highland Park Independent School District
Infratech, Inc.
Jet East, Inc.
Joliet Patter, Inc.
Kenneth Copeland Ministries
Andrew KMW Systems
Manheim Galleries, Inc.
Midland Manufacturing Company
Metuchen Holdings, Inc. (for Oakite Products)
P&R Auto Supply
PARTECH (Parker Technology, Inc.)
Sewell Ford, Inc.
Signal Capital Corporation
Sivalls, Inc.
HCA Health Services of Texas, Inc. d/b/a South Austin Medical Center
Summers Property Management Company
Surgikos (J&J)
Taylor Publishing Company
Tri-Star Chemical Company
United States Postal Service
Van Waters & Rogers, Inc.
Tyler Ford, Inc.
Volkswagen of America, Inc.

EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Mr. Carl E. Bolden, Cost Recovery Section (6H–EC), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 655–6670.

Written comments may be submitted to the person above by 30 days from the date of publication.

Dated: April 28, 1992.

W.B. Hathaway,

Regional Administrator, U.S. EPA, Region 6.

[FR Doc. 92–10818 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4131–1]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that a proposed administrative cost recover settlement concerning the Point of Rocks Superfund Site in Enon, Chesterfield County, Virginia was executed by the Agency on April 24, 1992. The settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607, against Chesterfield County Public Schools. The settlement requires Chesterfield County Public Schools to pay $70,000.00 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider any comments submitted in determining whether to consent to the proposed settlement. The Agency may withdraw or withhold consent if the comments submitted disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, Regional Docket Clerk, (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

DATES: Comments must be postmarked on or before June 8, 1992.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at U.S. EPA Region III, 841 Chestnut Building, Philadelphia, PA, 19107 and at the Chesterfield Public Library, 9501 Lori Road, Chesterfield, Virginia 23832. A copy of the proposed settlement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA, 19107. Comments should reference the Point of Rocks Superfund Site, Chesterfield County, Virginia; EPA Docket No. III–92–05–DC; and be addressed to Suzanne Canning, Regional Docket Clerk, at the above address.

FOR FURTHER INFORMATION CONTACT: Judith Hykel, Assistant Regional Counsel, U.S. EPA, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Telephone: (215) 597–8253.

Dated: April 30, 1992.

Alvin R. Morris,

Acting Regional Administrator, United States Environmental Protection Agency, Region III.

[FR Doc. 92–10815 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–59306; FRL–4064–6]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–92–7. The test marketing conditions are described below.

EFFECTIVE DATES: April 30, 1992. Written comments will be received until May 26, 1992.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–59306]" and the TME number "[TME–92–7]" should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: William B. Lee, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–613–A, 401 M St. SW., Washington, DC 20460, (202) 260–1769.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing

exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

EPA hereby approves TME–92–7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–92–7. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME–92–7

Date of Receipt: March 26, 1992.

Close of Review Period: May 9, 1992. The extended comment period will close May 26, 1992.

Applicant: (Confidential).

Chemical: (G) substituted carboxylic acid, compound with diethylaminoethanol.

Use: (S) oxygen scavenger in boiler feedwater.

Production Volume: 12,000 kgs.

Number of Customers: 4.

Test Marketing Period: 40 weeks, commencing on first day of commercial manufacture.

Risk Assessment: EPA identified concerns for developmental toxicity based on similar compounds. During manufacture and use of the TME substance, exposure to workers via inhalation (exposure route of concern) is negligible and potential exposures to the general population through drinking water are limited. EPA, therefore, has determined that the test market activities will not present an unreasonable risk of injury to health. EPA also identified environmental concerns for the test market substance, however, releases of the TME substance to surface water are not expected to exceed the toxic level of concern. Therefore, the Agency has determined that the test market activities will not present an unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

Dated: April 30, 1992.

John W. Melone,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–10820 Filed 5–7–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Port Authority of New York et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200654.

Title: Port Authority of New York and New Jersey/Evergreen America Corp. Container Incentive Agreement.

Parties:

Port Authority of New York and New Jersey ("Port Authority")
Evergreen America Corp. ("Evergreen").

Synopsis: The subject Agreement permits the Port Authority to make incentive payments to Evergreen of $20 per import and $40 per export container loaded with cargo that transits the port and is shipped by rail to or from points more than 260 miles from the port.

Agreement No.: 202–010717–026.

Title: United States/Panama Freight Association.

Parties:

Crowley Caribbean Transport Inc.,
Seaboard Marine Line, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment will modify the Voting Procedures by reducing the time for voting by poll from three days to two days. The parties have requested a shorthand review period.

Agreement No.: 202–010776–067.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify Article 8.2 of the Agreement and Article 4 of appendix B to set forth new Executive Committee and Owner's Meetings procedures.

Agreement No.: 203–011279–001.

Title: Caribbean and Central America Discussion Agreement.

Parties:

Central America Discussion Agreement
PANAM Discussion Agreement
Southeastern Caribbean Discussion Agreement
Hispaniola Discussion Agreement
U.S./Jamaica Discussion Agreement
Puerto Rico/Caribbean Discussion Agreement
United States Atlantic and Gulf/Venezuela
Freight Conference Discussion Agreement.

Synopsis: The proposed amendment would add Caribbean Shipowners Association as a party and would delete United States Atlantic and Gulf/Venezuela Freight Conference Discussion Agreement. The parties have requested a shortened review period.

Dated: May 5, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–10780 Filed 5–7–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 29, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio, and Banc One Illinois Corporation, Springfield, Illinois; to acquire 100 percent of the voting shares of Jefferson Bancorp, Inc., Peoria, Illinois, and thereby indirectly acquire Jefferson Bank, Peoria, Illinois.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fortress Bancshares, Inc., Hartland, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of W-CV Bancorp, Inc., Westby, Wisconsin, and thereby indirectly acquire Westby-Coon Valley State Bank, Westby, Wisconsin.

Board of Governors of the Federal Reserve System, May 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-10772 Filed 5-7-92; 8:45 am]

BILLING CODE 6210-01-F

Fred Stanley Havenick; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Fred Stanley Havenick, Coral Gables, Florida; to acquire 2.50 percent of the voting shares of Metro Bank of Dade County, Miami, Florida.

Board of Governors of the Federal Reserve System, May 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-10790 Filed 5-7-92; 8:45 am]

BILLING CODE 6210-01-F

PNC Financial Corp, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than May 29, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PNC Financial Corp, Pittsburgh, Pennsylvania; to acquire Sunrise Bancorp, Inc., Fort Mitchell, Kentucky, and its wholly owned subsidiary, Sunrise Bank for Savings, F.S.B., Fort Mitchell, Kentucky, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Cole Taylor Financial Group, Inc., Wheeling, Illinois; to acquire Centre Capital Funding Corp., Evanston, Illinois, and thereby engage in the following activities: (1) making, acquiring, or servicing loans or other extensions of credit for the company's account or for the account of others as would be made, for example, by a consumer finance company pursuant to § 225.25(b)(1)(i) of the Board's Regulation Y; and (2) acting as agent or broker for insurance that is (A) directly related to an extension of credit by Centre Capital Funding Corp., or any of its subsidiaries; and (B) limited to ensuring the repayment of the outstanding balance due on the extension of credit in the event of death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 4, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-10779 Filed 5-7-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families Administration on Children, Youth and Families Family and Youth Services Bureau.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of "Incidence and Prevalence of Drug Abuse Among Runaway and Homeless Youth"—a new information collection for the Family and Youth Services Bureau within the Administration on Children, Youth and Families (ACYF) of the Administration for Children and Families.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235. Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503. (202) 395-7316.

Information on Document

Title: Incidence and Prevalence of Drug Abuse Among Runaway and Homeless Youth

OMB No.: New Request

Description: This study will provide national data about the causes, extent and consequences of drug abuse by runaway and homeless youth. More specifically, the objectives of the study are to determine the magnitude and frequency of illicit drug use among runaway and homeless youth; the effects on such youth of drug abuse by family members; and any correlations between such use and attempts at youth suicide and other harmful or risk taking behavior caused or abetted by drugs

Annual Number of Respondents: 7,945

Annual Frequency: 1

Average Burden Hours Per Response: 5-40 min.

Total Burden Hours: 1,251

Dated: May 1, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-10766 Filed 5-7-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration on Children, Youth and Families, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of data collection for the National Center on Child Abuse and Neglect of the Administration on Children, Youth and Families (ACYF) of the Administration for Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information System Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC. 20503. (202) 395-7316.

Information on Document

Title: Validation and Effectiveness Study of Legal Representation through Guardian-ad-Litem)GAL)

OMB No.: New request.

Description: The first sample of this two-phase study will validate findings of a 1988 study of guardian ad litem case records and the second sample will yield data on the victims of abuse and neglect; determine the procedural effectiveness of the Guardian ad Litem program on a national scale; obtain descriptions of and measure procedural effectiveness of various forms of legal representation that serve the best interest of children during legal proceedings, and other activities associated with child welfare agency. Based on the findings of the study, a report on estimates of typical guardian ad litem activities nationally will be prepared by the Director of the National Center on Child Abuse and Neglect and submitted to the Congress

Annual Number of Respondents: 1577

Annual Frequency: 1

Average Burden Hours Per Response: .75-1.25 (hrs)

Total Burden Hours: 2284

Dated: May 1, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-10767 Filed 5-7-92; 8:45 am]

BILLING CODE 4130-01-M

Agency Information Collection Under OMB Review

AGENCY: Administration for Children, Youth and Families Family and Youth Services Bureau, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of a new collection of information for the Administration on Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401-9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503. (202) 395-7316.

Information on Document

Title: Evaluation of Prevention Projects Relating to Drugs and Youth Gangs

OMB No.: 0980-XXXX (new request)

Description: The Omnibus Anti-Drug Abuse act (Pub. L. 100-690, sec. 3501) established the Drug Abuse Education and Prevention Program Relating to Youth Gangs in 1988. The purpose of this program is to conduct community-base, comprehensive, and coordinated activities to reduce and prevent the involvement of youth in gangs that engage in illicit drug-related activities. In 1989, in response to this legislation, ACYF awarded 52 discretionary grants to implement this new program

The Administration for Children and Families is conducting an evaluation of the prevention projects on two levels: (a) At the level of the individual grantee site in terms of process and implementation; and (b) at the participation level in terms of outcomes pertaining to youth and families. The first approach involves a process evaluation of grantees sites and the second an outcome

evaluation. Data from the youth participant, youth nonparticipant, and adult questionnaires will be used to assess the effectiveness of the projects in preventing the participation of youth in gangs, especially those that are involved with drugs

Annual Number of Respondents: 500
Annual Frequency: 1
Average Burden Hours Per Response: 1.0
Total Burden Hours: 500

Dated: May 4, 1992.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92-10768 Filed 5-7-92; 8:45 am]

BILLING CODE 4130-01-M

Agency for Toxic Substances and Disease Registry

[ATSDR-52]

Selection of Priority Health Conditions and Research Approaches

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the selection by the Agency for Toxic Substances and Disease Registry (ATSDR) of seven priority health conditions (PHCs) and the four research approaches that should be used to evaluate the PHCs. The selection of the PHCs and research approaches is designed to provide a focus for health studies to aid in the exploration of the relationship between exposures to hazardous substances in the environment and specific health outcomes.

FOR FURTHER INFORMATION CONTACT: Agency for Toxic Substances and Disease Registry, Division of Health Studies, Office of the Director, Mailstop E31, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-6200.

SUPPLEMENTARY INFORMATION: Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the mission of ATSDR is to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. To this end, ATSDR has programs to address site- and substance-specific information needs. These programs include conducting health studies and establishing public health surveillance systems and registries of persons exposed to hazardous substances in the environment. In addition, ATSDR has selected the following seven priority health conditions (in alphabetical order) to direct future research:

Birth defects and reproductive disorders
Cancers (selected sites)
Immune function disorders
Kidney dysfunction
Liver dysfunction
Lung and respiratory diseases
Neurotoxic disorders

Since 1986, ATSDR has conducted public health assessments for more than 1,200 of the approximately 1,300 sites identified on the Environmental Protection Agency's National Priorities List (NPL) and has conducted more than 85 health study activities. In addition, ATSDR has evaluated the substances that pose the greatest human health hazards at NPL sites, and subsequently developed a list of 275 hazardous substances (56 FR 52165, October 17, 1991) based on (1) the frequency with which a substance was found at NPL sites, (2) the substance's toxicity, and (3) the likelihood of human exposure to the substance. ATSDR used information derived from health studies, public health assessments, and toxicological profiles to develop the seven PHCs.

The four research approaches ATSDR has selected to evaluate the PHCs are:

a. Evaluation of the occurrence of adverse health effects in specific populations. This includes ecologic epidemiology studies and evaluation of the incidence of prevalence of disease; disease symptoms; self-reported health concerns; and biological markers of disease, susceptibility, or exposure.

b. Identification of risk factors for adverse health effects from exposure to hazardous waste sites. This includes hypothesis-generated cohort or case-control studies of potentially affected populations to identify (1) links between exposure and adverse health effects and (2) risk factors that may be mitigated by prevention actions.

c. Development of methods to diagnose adverse health effects. This includes medical research to identify and validate new biological tests to be used to evaluate disease occurrence in potentially affected populations.

d. Diagnosis of adverse health effects in persons. This includes clinical-based research to identify and evaluate diagnostic and treatment regimes that may benefit persons who develop adverse health effects resulting from exposure the hazardous substances.

The knowledge ATSDR has gained about the substances most hazardous to human populations and the sites where these substances have been found will enable ATSDR to use the PHCs to accomplish ATSDR's mission. Moreover, the PHCs will aid in directing health studies toward those adverse health outcomes of greatest concern. Specifically, the PHCs will be used to evaluate potential health risks to persons living near hazardous waste sites and to determine needed programs and applied human health activities involving hazardous substances identified at the sites.

To further evaluate health risks for exposed populations, ATSDR will use the seven PHCs to assess the occurrence of adverse health effects and the relationship between effects and specific exposures to hazardous substances. In addition, the PHCs should assist public health officials in setting priorities and effectively directing national environmental public health epidemiologic research efforts. ATSDR encourages public health, medical, and university-based researchers to address these PHCs.

Dated: May 1, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 92-10764 Filed 5-7-92; 8:45 am]

BILLING CODE 4160-70-M

Food and Drug Administration

[Docket No. 91D-0154]

Compliance Policy Guide for Adulteration of Drugs; Direct Reference Seizure Authority; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7132a.03 entitled "Adulteration of Drugs Under Section 501(b) and 501(c) of the Act—Direct Reference Seizure Authority for Adulterated Drugs Under Section 501(b)." The CPG authorizes FDA district offices to transmit directly to the FDA, Office of Enforcement, seizure recommendations on an official drug (i.e., a drug purported to be or represented as a drug the name of which is recognized in an official compendium)

for human use which, when tested by compendial methods, fails to conform to compendial standards for quality, strength, or purity. Such drugs are adulterated under section 501(b) (21 U.S.C. 351(b)) of the Federal Food, Drug, and Cosmetic Act (the act), unless the differences from such compendial standards are plainly stated on the drug label.

ADDRESSES: Submit written requests for single copies of revised CPG 7231a.03 entitled "Adulteration of Drugs Under Section 501(b) and 501(c) of the Act—Direct Reference Seizure Authority for Adulterated Drugs Under Section 501(b)," to the Center for Drug Evaluation and Research Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, Food and Drug Administration, rm. 12A-43, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7132a.03 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William C. Crabbs, Division of Manufacturing and Product Quality (HFD-323), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8089.

SUPPLEMENTARY INFORMATION: The CPG provides internal policy and guidance for FDA district offices to transmit directly to the FDA, Office of Enforcement, seizure recommendations on an official drug for human use which, when tested by compendial methods, fails to conform to compendial standards for quality, strength, or purity, and is therefore adulterated under section 501(b) of the act, unless the differences from such standards are plainly stated on the drug label.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Dated: May 1, 1992.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 92–10861 Filed 5–7–92; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1992:

Name: National Advisory Committee on Rural Health

Date and Time: June 15–17, 1992; 8:30 a.m.

Place: The Hyatt Regency on Capital Hill, 400 New Jersey Avenue, NW., Washington, DC 20001.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: During this meeting, the Committee intends to address health care reform and EACH/PCH issues from a state hospital perspective. The Committee will continue shaping its agenda and developing recommendations to be included in the Fifth Report to the Secretary, Department of Health and Human Services.

Anyone requiring information regarding the subject Council should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda Items are subject to change as priorities dictate.

Dated: May 4, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–10862 Filed 5–7–92; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, April 24, 1992.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. National Ambulatory Medical Care Survey—0920—0234—Data collected from office-based physicians concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. Respondents: Businesses or other for-profit, small businesses or organizations; Number of Respondents: 3200; Number of Responses Per Respondent: 31; Average Burden Per Response: 0432 hours; Estimated Annual Burden: 4284 hours.

2. Cancer Prevention Awareness: The Black College As A Resource—New—This collection of information will assist in NCI's efforts to effectively utilize these historically black institutions in health promotion activities, especially as it pertains to cancer prevention. The information will also provide the NCI with the foundation for planning and developing further cancer prevention intervention research (e.g., smoking, dietary habits, knowledge and attitudes, health behavior practices) appropriate to the target population. Respondents: Individuals or households; Number of Respondents: 1807; Number of Responses per Respondent: 1.6; Average Burden per Response: .265 hours; Estimated Annual Burden: 765 hours.

3. Medical Device Good Manufacturing Practice Regulation—0910–0073—The records required by the GMP regulation are an integral part of an effective quality assurance program for the manufacture of devices and an essential mechanism by which manufacturers maintain control over their process. In order to consistently produce devices conforming to established specifications, controls must be in place. Protection of the public health depends upon the information provided to both industry and FDA by GMP records. Respondents: Businesses or other for-profit; Small businesses or organizations; Number of Respondents: 9,289; Number of Responses Per Respondent: 0; Average Burden Per Response: 40,398 hours; Estimated Annual Burden: 375,266 hours.

Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New

Executive Office Building, room 3002, Washington, DC 20503.

Dated: May 4, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92–10808 Filed 5–7–92; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR 2934–N–77]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Britman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) (501–0067; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; Dept. of Interior; Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; (These are not toll-free numbers).

Dated: May 1, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 05/08/92

Suitable/Available Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino CA 92402–
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9290 sq. ft., 2 story concrete, most recent use-radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Bldgs. 604, 605, 612, 611, 613–618
Point Arena Air Force Station
Mendocino County, CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010237–189010246
Status: Unutilized
Comment: 1232 sq. ft. each; stucco-wood frame; most recent use—housing.

Bldg. 21180
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Location: Hwy 1, Hwy 246, Coast Rd., PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130384
Status: Unutilized
Comment: 7487 sq. ft., 1 story/wood shingle structure, most recent use—contracting administrative office, needs major rehab.

Yunker House (07–108)
Redwood National Park
Hiouchi Co: Del Norte CA 95531
Landholding Agency: Interior
Property Number: 619140004
Status: Unutilized
Comment: 900 sq. ft., 1 story frame residence, off-site use only.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1 and Route 3 Marine Drive.

Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft.; 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dedeco Co: Guam GU 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/ modified quonset; on 376 acres; protions of building and land leased to Government of Guam.

Harmon VORsite (Portion)(AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue
Elmore County, ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of, asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Bldg. 705, Ditchrider House
Boise Project
Notus Co.: Cayon ID 83656
Landholding Agency: Interior
Property Number: 619120010
Status: Unutilized
Location: T5N, R3W, Sec 2, SE¼, SW¼, SW¼
Comment: 586 sq. ft., 1 story residence, needs major rehab, off-site use only.

Bldg. 508—Warehouse
Black Canyon Dam
Emmett Co: Gem, ID 83611
Landholding Agency: Interior
Property Number: 619120011
Status: Unutilized
Comment: 4625 sq. ft., needs major rehab, most recent use—storage, off-site use only.

Bldg. 510—Carpenter Shop
Black Canyon Dam
Emmett Co: Gem, ID 83611
Landholding Agency: Interior
Property Number: 619120012
Status: Unutilized
Comment: 4625 sq. ft., needs major rehab, most recent use—storage, off-site use only.

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010269
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Michigan

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010776
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 floor; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1944 sq. ft.; 1 story concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story; concrete block; potential utilities; possible asbestos; most recent use—Fire Department vehicle parking building.

Bldgs. 51–62

Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010791–189010802
Status: Excess
Comment: 1134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldgs. 63–67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010803–189010807
Status: Excess
Comment: 1306 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.

Bldgs. 72–89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010811–189010828
Status: Excess
Comment: 1168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldgs. 9–13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010835–189010839
Status: Excess
Comment: 1056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5–8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010840–189010843
Status: Excess
Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess
Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.

Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenace shop and office.

Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.

Bldgs. 216–224, 212, 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010847–189010855, 189010859, 189010861
Status: Excess
Comment: 780 sq. ft. each; 1 story wood frame housing garages.

Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.

Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.

Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility.

Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.

Bldgs. 31–35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010867–189010871
Status: Excess
Comment: 36 sq. ft. each; 1 story; metal frame; prior use—storage of fire hoses.

Bldgs. 36–37, 39, 201–207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010872–189010874, 189010879–189010885
Status: Excess
Comment: 25 sq. ft. each; 1 floor metal frame; prior use—storage of fire hoses.

Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.

Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

New Mexico

Old Helium Plant
Gallup Co: McKinley, NM 87301
Landholding Agency: Interior
Property Number: 619010002
Status: Excess
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.

Comment: 7653 sq. ft., 1 story office and warehouse space, possible asbestos, on 4.65 acres, secured area with alternate access.

Oregon

Bldg. #3 (Ranger Residence)
1900 Caves Highway
Cave Junction Co: Josephine, OR 97523
Landholding Agency: Interior
Property Number: 619130004
Status: Excess
Comment: 732 sq. ft., one story cabin, off-site use only.

Texas

Administration Bldg.
Guadalupe Mountains National Park
Pine Springs Co: Culberson, TX 79847
Landholding Agency: Interior
Property Number: 619130005
Status: Excess
Comment: 2016 sq. ft., one story frame structure, most recent use—office, off-site use only.

Washington

Thompson Boathouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030011
Status: Unutilized
Comment: 693 sq. ft., 1 story boathouse, no utilities, needs rehab, off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Landholding Agency: Interior
Property Number: 619030012
Status: Unutilized
Comment: 150 sq. ft., frame utility shed, limited utilities, off-site use only.

Land (by State)

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing systems equipment.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.

Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Michigan

Calument Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.

Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Bldgs. 12, 14, 16, 111, 113, 115, 117
Patrick Air Force Base
Patrick AFB Co: Brevard FL 32925
Landholding Agency: Air Force
Property Numbers: 189140030–189140036
Status: Underutilized
Comment: 2100 sq. ft. each, 1 story concrete block, needs rehab, presence of asbestos.

Michigan

Bldg. 20
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.

Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1000 sq. ft.; 1 floor; possible asbestos; potential utlities; most recent use—maintenance facility.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St Louis MO 63125–4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres, portion near flammable materials; portion on archaeological site; special fencing required.

New Mexico

Bldg. 13 1606 ABW/DE
Kirtland AFB
Wyoming Avenue
Kirtland Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189010072
Status: Unutilized
Comment: 520 sq ft., 1 story portable building, off-site use only.

South Dakota

54 Bldgs.—Renel Heights
Ellsworth AFB Co: Pennington SD 57706–
Location: Across from main gate turn off.
Landholding Agency: Air Force
Property Number: 189010343–189010355, 189010386–189010426
Status: Unutilized
Comment: 852 sq. ft. to 1652 sq. ft. each; 1 story conrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.

124 Bldgs.—Skyway
Ellsworth AFB Co: Pennington SD 57706–
Location: Between main gate turn off and school gate.
Landholding Agency: Air Force
Property Number: 189010356–189010384, 189010760–189010774, 189030008–189030015, 189040003–189040026, 189110033–189110080
Status: Unutilized
Comment: 481 sq. ft. to 1256 sq. ft. each; 1 and 2 story wood frame residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.

Bldg. 1108, 1109, 1113, 1114
Ellsworth Air Force Base
Center Drive
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189010439–189010442
Status: Unutilized
Comment: 10303 sq. ft.; 2 story wood frame with basement; possible asbestos; secure facility with alternate access; potential utilities.

Texas

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft., possible asbestos, most recent use—supply store, needs rehab.

Bldg. 698
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5815 sq. ft., 1 story corrugated iron, possible asbestos, needs rehab, most recent use—recreation, workshop.

Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235—
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage; possible asbestos; needs rehab.

Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235—
Landholding Agency: Air Force
Property Number: 189110091

Status: Unutilized
Comment: 1344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.

Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235—
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

Utah

100 KW Solar Photovoltaic Sys.
Natl. Bridges National Monument
P.O. Box 1
Lake Powell Co: San Juan UT 845533—
Landholding Agency: GSA
Property Number: 419140001
Status: Excess
Comment: Solar panels, current use—generate electrical power.

Bryce Canyon Admin. Site
Near Bryce Canyon National Park
Bryce Canyon Co: Garfield, UT 84717
Landholding Agency: Interior
Property Number: 619140005
Status: Underutilized
Comment: 7 houses and other bldgs. on 66 acre site, seasonal use, one story wood frame structures, 48 thru 1400 sq. ft., environmentally protected.

Washington

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030001
Status: Unutilized
Comment: 2 story residence, no utilities, needs rehab, off-site use only.

Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030002
Status: Unutilized
Comment: 888 sq. ft., 1 story residence, no utilities, needs rehab, off-site use only.

Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030003
Status: Unutilized
Comment: 240 sq. ft., 1 story garage, no utilities, needs rehab, off-site use only.

Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030009
Status: Unutilized
Comment: 300 sq. ft., 1 story shop, no utilities, needs rehab, off-site use only.

Thompson Powerhouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030010
Status: Unutilized
Comment: 160 sq. ft., 1 story powerhouse, no utilities, needs rehab, off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Landholding Agency: Interior
Property Number: 619030013
Status: Unutilized
Comment: 240 sq. ft., frame storage building, no utilities, needs rehab, off-site use only.

Bldg. 1185
Lake Crescent Ranger Station HC 62, Box 10
Carter storage Building
Port Angeles, WA 98362
Landholding Agency: Interior
Property Number: 619030016
Status: Unutilized
Comment: 92 sq. ft., 1 story storage building, no utilities, off-site use only.

Haas Barn
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040001
Status: Excess
Comment: 1408 sq. ft., 1 story wood frame barn, potential utilities, poor condition, off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040002
Status: Excess
Comment: 480 sq. ft., wood frame shed, poor condition, off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040003
Status: Excess
Comment: 64 sq. ft., wood frame shed, poor condition, off-site use only.

Haas Residence
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040006
Status: Excess
Comment: 624 sq. ft., 1 story wood frame residence, potential utilities, poor condition, off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040007
Status: Excess
Comment: 4200 sq. ft., wood frame barn, most recent use—storage, no utilities, off-site use only.

Wyoming

Administration Bldg.
Fontenelle Camp
Fontenelle Co: Lincoln, WY
Landholding Agency: Interior
Property Number: 619030017
Status: Excess
Location: Approximately 24 miles southeast of Labarge, off State Road 372 and on County Road 316.
Comment: 4464 sq. ft., 2 story brick structure with a 2880 sq. ft. wood frame addition, needs rehab, possible asbestos, off-site use only.

Land (by State)

California

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino Ca 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.

Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Florida

Eglin AFB
Mossy Head Co: Walton FL 32533–
Location: NW quadrant of Florida Highway 285 and I–10. Bounded on the North by Louisville RR Near Mossy Head, Florida.
Landholding Agency: Air Force
Property Number: 189010134
Status: Excess
Comment: 50 acres; Parcel 9; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head Co: Walton FL 32533–
Location: NE quadrant of Florida Highway 285, I–10 intersection. Bounded on the North by Louisville and Nashville RR near Mossy Head, Florida.
Landholding Agency: Air Force
Property Number: 189010135
Status: Excess
Comment: 265 acres; Parcel 10; previous buffer zone; potential utilities.

Eglin AFB
Mossy Head Co: Walton FL 32533–
Location: Approximately 1 mile east of Florida Highway 285 and US Highway 90 on north side.
Landholding Agency: Air Force
Property Number: 189010136
Status: Excess
Comment: 47 acres; Parcel 11: previous buffer zone; potential utilities.

Suitable/To be Excessed

Nevada

Bldgs. 300–302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force

Property Numbers: 189120001–189120003
Status: Unutilized
Comment: 1573 sq. ft. each one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 303–306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120004–189120007
Status: Unutilized
Comment: 2750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 307–310, 318, 320–322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120008–189120011, 189120019, 189120021–189120023
Status: Unutilized
Comment: 2170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 311–317, 319, 324–326
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120012–189120018, 189120020, 189120025–189120027
Status: Unutilized
Comment: 2424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120024
Status: Unutilized
Comment: 1233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 331–341, 343, 345–346, 348–353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120028–189120047
Status: Unutilized
Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120048
Status: Unutilized
Comment: 2464 sq. ft., one story, most recent use—maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120049
Status: Unutilized
Comment: 2570 sq. ft., one story, most recent use-Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 sq. ft., one storyt, most recent use—religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 sq. ft., one story, most recent use—child care facility, easement restrictions, potential utilities, off-site removal only.

Bldgs. 3027, 3029–3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120052, 189120054–189120065
Status: Unutilized
Comment: 120 sq. ft. each, one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use—storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

Bldg. 101
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 102–106
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110096–189110100
Status: Excess
Comment: 988 sq. ft. each; 3 bedroom single family housing units; needs rehab; off-site use only.

Bldgs. 107, 110–111
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110101–189110103
Status: Excess
Comment: 768 sq. ft. each; 2 bedroom single family housing units; needs rehab; off-site use only.

Bldgs. 112–116, 123–129
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110104–189110108, 189110115–189110121
Status: Excess
Comment: 1510 sq. ft. each; 3 bedroom single family housing units with attached garage; needs rehab; off-site use only.

Bldgs. 117, 119–122
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110109, 189110111–189110114
Status: Excess
Comment: 1595 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldg. 118
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110110
Status: Excess
Comment: 2295 sq. ft.; 4 bedroom single family housing unit, needs rehab; off-site use only.

Bldg. 141
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110122
Status: Excess
Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.

Bldgs. 142–145
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110123–189110126
Status: Excess
Comment: 624 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Bldgs. 201–218
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110127–189110144
Status: Excess
Comment: 1203 sq. ft. each; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.

Bldgs. 221–229
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110145–189110153
Status: Excess
Comment: 672 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 203, 113
Tin City Air Force Station
21 CSG/DEER

Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010296–189010297
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010298–189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 1401
Galena Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010302
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 11–230, 21–116, 34–616, 43–010, 63–320, 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010303–189010308
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 103, 110, 112–115, 118, 1001, 1018, 1025, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010309–189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010320–189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 103–105, 110, 114, 202, 204–205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010330–189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road.
Comment: Isolated and remote; Arctic environment

Alabama

38 Bldgs.
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189010002–189010005, 189110165–189110167, 189120231–189120232, 189130335–189130336, 189130370–189130381, 189140010–189140014
Status: Unutilized
Reason: Secured Area

22 Bldgs.
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Numbers: 189010011–189010013, 189010015–189010016, 189010019–189010020, 189010022, 189040853–189040855, 189130349, 189140001–189140009, 189140021
Status: Underutilized
Reason: Secured Area

Bldg. 1435–1436, 1440–1441
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189030220–189030223
Status: Unutilized
Reason: Floodway, Secured Area

Bldg. 1004
Reserves Forces Training Facility
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Location: 1004 Maxwell Blvd. & Kelly Street
Landholding Agency: Air Force
Property Number: 189130369
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone

Arizona

Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force
Property Number: 189040856
Status: Unutilized
Reason: Secured Area

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone

Bldg. 392 60 AFB/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 1182 60 AFB/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Bldg. 152, 159, 384 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano CA 94535–5496
Landholding Agency: Air Force
Property Numbers: 189010190–189010192
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 707, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Numbers: 189010193, 189010196–189010197
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

Bldg. 100–101, 116, 202
Point Arena Air Force Station
Co: Mendocino CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010233–189010236
Status: Unutilized
Reason: Secured Area

Bldg. 201–204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Numbers: 189010546–189010549
Status: Unutilized
Reason: Secured Area

Bldgs. 1009–1010, 1015, 1022–1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010558–189010563
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 8010
Vandenberg Air Force Base
Off California on Lompoc Avenue
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189010566
Status: Unutilized
Reason: Secured Area

Bldgs. 1100–1101, 1103–1107, 1110, 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010567–189010570, 189010572–189010574, 189010579–189010580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 23102
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Highway 1 and Highway 246; Coast Road, Pt. Sal Rd; Migeulito Cyn
Landholding Agency: Air Force
Property Number: 189110082
Status: Unutilized
Reason: Secured Area

Bldgs. 1011–1014, 1016–1021, 1823
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130350–189130360
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 5015
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130361
Status: Excess
Reason: Secured Area, Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldgs. 8006, 8011, 11443, 1011–1014, 1016–1021, 1027, 1031, 6105, 8111, 8118–8119, 8140–8141, 9341, 10312, 10314, 10503
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130362, 189140028–189140029, 189210007–189210028
Status: Unutilized
Reason: Secured Area

Bldg. 10748
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210029
Status: Unutilized
Reason: Other Comment: Extensive deterioration

Bldg. 11195
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189220017
Status: Underutilized
Reason: Secured Area

Colorado

Bldg. 24
Buckley Air Nat'l Guard Base
Aurora Co: Arapahoe CO 80011–9599
Location: Demolished 7 Dec. 90
Landholding Agency: Air Force
Property Number: 189010249
Status: Unutilized
Reason: Secured Area

Bldg. 291
Lowry Air Force Base
Denver Co: Denver CO 80230–5000
Location: South of 6th Avenue and east of Rosemary Court
Landholding Agency: Air Force
Property Number: 189010250
Status: Excess
Reason: Secured Area

Delaware

Bldgs. 1310, 230
Dover Air Force Base
436 ABG/DE
Dover AFB Co: Kent DE 19902–
Landholding Agency: Air Force
Property Numbers: 189010727, 189140017
Status: Unutilized
Reason: Secured Area

Bldg. 1900, 1304
436 CSG Dover AFB
Dover Co: Kent DE 19902–5516
Landholding Agency: Air Force
Property Numbers: 189120230, 189140018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Florida

Bldg. 42, 6058–6059
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Numbers: 189110001–189110003
Status: Unutilized
Reason: Secured Area

Bldg. 8501, 8505, 8507
Eglin Air Force Base
Site A–5
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Numbers: 189110005–189110006, 189110008
Status: Unutilized
Reason: Floodway, Secured Area

Bldg. 576
Patrick Air Force Base
6th Street and South Patrick Drive
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189110160
Status: Unutilized
Reason: Floodway

Bldg. 1635
Patrick Air Force Base
River Picnic Area/Skeet Range
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189110161
Status: Unutilized
Reason: Secured Area

Bldg. 566, 568–569, 571–572, 574
Patrick Air Force Base
Cocoa Beach Co: Brevard FL 32925–
Location: A Street
Landholding Agency: Air Force
Property Numbers: 189130363–189130368
Status: Excess
Reason: Secured Area, Within airport runway clear zone

Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220001
Status: Unutilized
Reason: Secured Area

Bldg. 430
Patrick Air Force Base
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220002
Status: Unutilized
Reason: Secured Area

Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area

Facility 01322
Cape Canaveral AFS
1301 Flight Control Road
Cape Canaveral Co: Brevard FL 32920
Landholding Agency: Air Force
Property Number: 189220004
Status: Unutilized
Reason: Secured Area

Idaho

Bldgs. 1012, 923, 604
Mountain Home Air Force Base
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Numbers: 189030004–189030006
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material

Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040857
Status: Unutilized
Reason: Within 2,000 ft of flammable or explosive material, Within airport runway clear zone

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABG/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized

Reason: Within airport runway clear zone, Secured Area

Bldg. 3670, 503, 351, 869, 1401–1410, 865
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Numbers: 189010248, 189010725, 189110086–189110087, 189130337–189130347
Status: Unutilized
Reason: Secured Area

Indiana

Bldg. 520, 308, 301
Grisson Air Force Base
Grisson Co: Miami IN 46971–
Landholding Agency: Air Force
Property Numbers: 189010183–189010184, 189010186
Status: Underutilized
Reason: Secured Area

Bldg. 219, 307
Grissom Air Force Base
Grisson AFB Co: Miami IN 46971–5000
Landholding Agency: Air Force
Property Numbers: 189110084–189110085
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 707
Parallel to NE–SW runway & alternate runway
Grisson AFB Co: Miami IN 46971–
Landholding Agency: Air Force
Property Number: 189130334
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Louisiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area

Massachusetts

Bldg. 1900, 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Numbers: 189010438, 189040002
Status: Unutilized
Reason: Secured Area

Maryland

Bldg. 4–5
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Numbers: 189010261, 189010264
Status: Unutilized
Reason: Secured Area

Bldg. 3427
Andrews Air Force Base
3427 Pennsylvania Avenue
Andrews AFB Co: Prince George's MD 20335–
Landholding Agency: Air Force
Property Number: 189140016
Status: Unutilized
Reason: Secured Area

Maine

Bldg. 5200, 6200, 6100
Loring Air Force Base
Limestone Co: Aroostock ME 04750–
Landholding Agency: Air Force
Property Numbers: 189010541–189010543
Status: Unutilized
Reason: Secured Area

Michigan

Bldg. 560, 5658, 580, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5670
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48045–
Landholding Agency: Air Force
Property Numbers: 189010522–189010533
Status: Unutilized
Reason: Secured Area

Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010810
Status: Excess
Reason: Other
Comment: sewage treatment and disposal facility

Bldg. 99–100
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010831–189010832
Status: Excess
Reason: Other
Comment: Water well

Bldg. 118, 120, 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010875–189010976, 189010878
Status: Excess Reason: Other Comment: Gasoline Station

Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010877
Status: Excess Reason: Other Comment: Pump lift station

Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010889
Status: Excess Reason: Other Comment: Sewer pump facility

Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010890
Status: Excess Reason: Other Comment: Water pump station

Missouri

Bldg. 42, 45–47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125–
Landholding Agency: Air Force
Property Numbers: 189010726, 189010728–189010731
Status: Unutilized
Reason: Secured Area

Montana

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental

Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010077
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental

Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189010078
Status: Unutilized
Reason: Other environmental, Secured Area
Comment: Friable asbestos

Bldg. 1500, 1502
Malmstrom AFB
Perimeter Road
Malmstrom Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010079–189010080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Other environmental

Bldg. 627, 677
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010722–189010723
Status: Unutilized
Reason: Secured Area, Other environmental

Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189040057
Status: Underutilized
Reason: Secured Area, Other environmental

Nebraska

Offutt Communications Annex-#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Status: Unutilized
Reason: Other Comment: Former sewage lagoon

North Carolina

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area

Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area

Bldg. N. 459
Pope Air Force Base
Armistead Street
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189140019
Status: Unutilized
Reason: Secured Area

Bldg. 024
Pope Air Force Base
Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189220003
Status: Underutilized
Reason: Secured Area

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area

New Hampshire

Bldgs. 132, 317, 343, 439
Pease Air Force Base
Pease AFB Co: Rockingham NH 03803–
Landholding Agency: Air Force
Property Numbers: 189010536–189010539
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

Bldg. 20330
Kirtland Air Force Base
1606 ABW/DEEVR
Kirtland AFB Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189110083
Status: Unutilized
Reason: Secured Area

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area

Bldg. 48013
Kirtland Air Force Base
Kirtland AFB Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189140020
Status: Unutilized
Reason: Secured Area

Farmington Office and Yard
900 La Plata Highway
Farmington Co: San Juan NM 87499–
Landholding Agency: Interior
Property Number: 619010001
Status: Unutilized
Reason: Within airport runway clear zone

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 272, 888
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022–189140023
Status: Excess
Reason: Secured Area

Ohio

Facility 30205
Wright-Patterson Air Force Base
Greene Co: Greene OH 45433–
Landholding Agency: Air Force
Property Number: 189010434
Status: Unutilized
Reason: Secured Area

910 TAG
Base Sewage Treatment Plant
Vienna Co: Trumbull OH 44473–5000
Location: West of the 910 TAG Base on Ridge Road. Youngstown Municipal Airport
Landholding Agency: Air Force
Property Number: 189110081
Status: Excess
Reason: Other
Comment: Sewage treatment plant

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705–5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material

Oregon

Eugene District Office Site
751 South Danebo
Eugene Co: Lane OR 97402–
Landholding Agency: Interior
Property Number: 619010003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area

South Dakota

176 Bldgs., Renel Heights
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Location: Across from main gate turn off.
Landholding Agency: Air Force
Property Numbers: 189010443–189010521, 189010732–189010759, 189030016–189030032, 189040027–189040055, 189040058, 189110011–189110032
Status: Unutilized
Reason: Other
Comment: Earth movement/shifting, cracked exterior and interior walls with separations several inches wide; earth shift severed sewer lines

101 Bldgs., Skyway
Ellsworth Air Force Base
Ellsworth Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Numbers: 189120066–189120166
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

220 Bldgs., Renel Heights
Ellsworth Air Force Base
Ellsworth Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Numbers: 189120167–189120229, 189130001, 18913003–189130157, 189130382
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

175 Bldgs., Skyway
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Numbers: 189130158–189130331, 189130383
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 8904
Maintenance Work Center Unit
204 Harrison Terrace
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189130332
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldgs. 88513, 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706–
Landholding Agency: Air Force
Property Numbers: 189210001–189210002
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone

Bldg. 645
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–
Location: West of Lubbock
Landholding Agency: Air Force
Property Number: 189010210
Status: Excess
Reason: Secured Area

Bldg. 02106
Reese Air Force Base
Lubbock Co: Lubbock TX
Landholding Agency: Air Force
Property Number: 189210005
Status: Unutilized
Reason: Secured Area

Utah

11 Bldgs
Hill Air Force Base
Co: Davis UT 84056–
Landholding Agency: Air Force
Property Numbers: 189010275, 189010277, 189010279, 189010281, 189010283, 189010285, 189010287, 189010289, 189010291, 189010293, 189010295
Status: Unutilized
Reason: Secured Area

Bldg. 788–790
Hill Air Force Base
Co: Davis UT 84056–
Landholding Agency: Air Force
Property Numbers: 189040858–189040860
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area

Washington

21 Bldgs.
Fairchild AFB
Fairchild Co: Spokane WA 99011
Landholding Agency: Air Force
Property Numbers: 189010139–189010159
Status: Unutilized
Reason: Secured Area

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Number: 189210004
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Dahinden Chicken Coop
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Landholding Agency: Interior
Property Number: 619030014
Status: Unutilized
Reason: Other
Comment: Chicken coop

Dahinden Outhouse
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Landholding Agency: Interior
Property Number: 619030015
Status: Unutilized
Reason: Other
Comment: Detached latrine

Haas Chicken Coop
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040004
Status: Excess
Reason: Other
Comment: Chicken coop

Haas Lean-to
% Quinault Ranger Station
Route 2, Box 76
Amanda Park Co: Grays Harbor, WA 98526
Landholding Agency: Interior
Property Number: 619040005
Status: Excess
Reason: Other
Comment: Lean-to

Bldg. #36—Stehekin District
Company Creek Road
Stehekin Co: Chelan, WA 98852
Landholding Agency: Interior
Property Number: 619130001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 689—Comfort Station
Olympic Hot Springs Wilderness Backcountry
Port Angeles Co: Clallam, WA 98362–6798
Landholding Agency: Interior
Property Number: 61913002
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. 252—Storage Shed
Olympic Hot Springs Wilderness Backcountry
Port Angeles Co: Clallam, WA 98362-6798
Landholding Agency: Interior
Property Number: 619130003
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. L–103
Mount Rainier National Park
Longmire Maintenance Complex
Longmire Co: Pierce, WA 98397
Landholding Agency: Interior
Property Number: 619130007
Status: Excess
Reason: Other
Comment: Extensive deterioration

Bldg. L–234
Mount Rainer National Park
Longmire Maintenance Complex
Longmire Co: Pierce, WA 98397
Landholding Agency: Interior
Property Number: 619130008
Status: Excess
Reason: Other
Comment: Extensive deterioration

Wyoming

Bldg. 31, 34, 37, 284, 385, 803
F. E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Number: 189010198–189010203
Status: Unutilized
Reason: Secured Area

Land (by State)

Alaska

Champion Air Force Station
21 CSG/DEER
Elmendorf ADB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic environment

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isolated and remote area; Arctic coast

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road
Comment: Isloated and remote area, Arctic coast

Arizona

Elliott Homes—Canal
West of 77th Ave. and South of Cholla Street
Peoria Co: Maricopa AZ 85345–
Landholding Agency: Interior
Property Number: 619130006
Status: Surplus
Reason: Other
Comment: Lateral canal

Florida

Land
MacDill Air Force Base
6601 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway

Maryland

Land
Brandywine Storage Annex
1776 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area

Puerto Rico

119.3 acres
Culebra Island PR 00775
Landholding Agency: Interior
Property Number: 619210001
Status: Excess
Reason: Floodway

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized

Reason: Secured Area

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway

Parcel 3 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

Parcel 2 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Unutilized
Reason: Secured Area

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area

[FR Doc. 92–10608 Filed 5–7–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–02–5440–10–B026]

Proposed Right-of-Way and Land Exchange for Proposed Mesquite Regional Landfill

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and the County of Imperial will prepare a joint Federal-County Environmental Impact Report/Statement (EIR/EIS) for a proposed right-of-way and land exchange, in connection with a proposed Class III Municipal Solid Waste (MSW) landfill in eastern Imperial County, California.

Gold Fields Mining Co. (Gold Fields), Western Waste Industries, and S.P. Environmental Systems have formed a (Partnership) that would own and develop the landfill located contiguous to the site of the currently operating Mesquite Gold Mine and Ore Processing Facility (Mesquite Mine) in eastern Imperial County. The project would also include the storage of recyclable materials, railcar unloading and loading, rail and equipment maintenance, landfill gas recovery and destruction by flaring or utilization of energy recovery techniques, leachate collection and processing, and wastewater treatment.

DATES: *For Scoping Meetings and Comments:* Public scoping meetings will be held on the following dates: 7 p.m., Wednesday, May 27, 1992, at the El Centro Community Center, 375 South First Street, El Centro, California 92243, (619–337–4555); 7 p.m., Thursday, May 28, 1992, at the Desert Expo Center, Fine Arts Building, 46–350 Arabia Street, Indio, California 92201 (619–863–8247). Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues (including alternatives) that need to be analyzed, and to identify and eliminate from detailed study those issues that are not significant. All comments recommending that the EIR/EIS address specific environmental issues should contain supporting documentation.

ADDRESSES: Written comments must be filed no later than June 12, 1992, reference BLM CA–29617, and should be addressed to Area Manager, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243–2298.

FOR ADDITIONAL INFORMATION CONTACT: Ben Koski, Area Manager, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243–2298.

SUPPLEMENTARY INFORMATION: The proposed landfill would be located primarily on Mesquite Mine property adjacent to the existing Mesquite Mine in a sparsely populated portion of eastern Imperial County. The nearest residences would be located at the Boardman and Glamis Beach Store areas, located approximately 3 and 3.5 miles, respectively, southwest of the proposed landfill.

The cities of Brawley and Palo Verde are located approximately 35 miles to the west and northeast, respectively. In addition to the existing mining operation, other land uses near the project area include: (1) Gravel borrowing from federal land immediately to the west of the Mesquite Mine which has been designated as a gravel withdrawal area by the BLM, (2) the Chocolate Mountains Aerial Gunnery Range, immediately north of the Mesquite Mine, which is actively used for military aircraft training, and (3) recreational vehicle activity (primarily weekends) in the Imperial Sand Dunes Recreation Area further to the west. Excavated materials from the mine, which has been operated by Gold Fields since 1985, would be used for most of the daily, intermediate and final cover requirements at the proposed landfill, resulting in the productive utilization of a large portion of the mine overburden and ore residue piles. Claystone portions of the overburden removed from the mine pit areas would be used to construct clay sections of the landfill base liner. Approximately 600 million tons of Class III MSW would be deposited at the landfill, which could operate for about 100 years. The landfill would be designated to extend above the existing desert floor elevation to maintain maximum separation above the limited ground water resources in the area. The landfill will not be located in the existing mine pits which are still in operation, and will contain residual mineralization at the time of the mine's closure in 10 to 15 years.

The project would also include a four-to-five-mile (approximate, depending on final alignment) railroad spur extending from the existing Southern Pacific main line track to a special container handling facility (intermodal), constructed at the landfill to facilitate MSW delivery and handling. The MSW would be transported to the new spur over existing rail systems from various locations in southern California. The spur alignment would be designed to follow natural topography and drainages, minimize new disturbance of land, and avoid interference with existing recreational activities near Highway 78. The MSW would be transported in completely enclosed transport containers or specially designed rail cars.

Two project configurations are being evaluated. One project configuration, referred to as Project "A", is located on land owned by Gold Fields, except for four small parcels consisting of about 100 acres of federal land within the proposed boundary. The other project

configuration referred to as Project "B", consists of the area proposed for Project "A" plus an additional 1,742 acres of adjacent lands which are also currently owned by the federal government and managed by the BLM. Though they would involve different configurations, both Project "A" and Project "B" would function in very much the same way, operationally.

The proposed exchange of land would allow the Partnership to obtain ownership of all land contained within either Project "A" or "B" boundaries, depending upon the finally determined project configuration. The land offered for exchange has been selected to enhance protection of important habitat, or enhance the BLM's ability to manage federally-owned scenic areas. Final selection of the project configuration will be determined after completing the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) public review processes.

The proposed landfill would be constructed and operated using state-of-the-art engineering and regulatory procedures, to meet strict federal and state guidelines for landfill construction and operation, and safeguard against contamination of the environment.

For the Mesquite Regional Landfill, ground water resources would be protected by a specially designed impermeable liner and overlying leachate collection system constructed prior to placement of the municipal solid waste. Initially, the liner would be a composite system of low permeability clay and very low permeability synthetic material. Modifications to the liner system would be made in the future, as appropriate, to suit operational experiences and new synthetic material which may be developed during the 100-year landfill life. A gas collection system would be constructed as the landfill cells are developed. Collected landfill gas would be controlled by an onsite flare system, used to generate electricity for onsite use and/or offsite sale, or processed for use as commercial grade fuel. Ground water, gas and vadose zone (if appropriate) monitoring systems would be provided to demonstrate adequacy of the landfill design and operation. Watershed drainage on and around the landfill would be controlled with constructed channels and berms designed to become part of the extensive flood diversion system in the area which has been developed for the Mesquite Mine. Drainage of rainfall directly onto the landfill would be controlled by a system of benches, berms, protected ditches, and pipes, which would direct water away from exposed trash and into the flood diversion channels. Water that occasionally reaches small uncovered trash working areas would be collected and sent to an onsite treatment plant.

Potential issues include, but are not limited to, air quality, social and economic impacts, ground and surface water quality, impacts to desert tortoise habitat, cultural or historical resources, and recreation values.

G. Ben Koski,

Area Manager.

[FR Doc. 92-10743 Filed 5-7-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-013-02-4410-13: GP2-219]

Lakeview District Multiple Use Advisory Council and Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Lakeview District.

ACTION: Notice of joint tour.

SUMMARY: The Lakeview District Multiple Use Advisory Council and Grazing Advisory Board will meet for a tour at the Klamath Falls Resource Area Office, 2795 Anderson, #25, Klamath Falls, OR. The focus of the tour will be grazing, riparian and recreation management of the Stukel Mountain Area, especially as it applies to future decisions in the ongoing Klamath Falls Resource Management Plan

The public is invited to attend the tour but a high profile four-wheel drive vehicle is needed and limited space is available in the vehicles provided. If you would like to attend, you must contact the Lakeview District Office by Tuesday, May 19.

DATES: Thursday, May 21, 1992, 9:30 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, 1000 South Ninth Street, Lakeview, OR 97630, (503) 947-6110.

Judy Ellen Nelson,

District Manager.

[FR Doc. 92-10799 Filed 5-7-92; 8:45 am]

BILLING CODE 4310-33-M

[AZ-020-02-4212-12; AZA 26587]

Realty Action: Exchange of Public Lands; Arizona

BLM proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership.

The following described public lands are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian, Arizona

Affecting the following 399.83 acres in Maricopa County:

T. 5N., R. 3 E.,
Sec. 1, SE¼NE¼.
T. 5 N., R. 4 E.,
Sec. 6, SW¼NE¼.
T. 6 N., R. 3 E.,
Sec. 35, E½NW¼SE¼NW¼.
T. 6 N., R. 4 E.,
Sec. 1, S½SW¼
Sec. 11, NE¼ less MS 4334;
Sec. 12, NW¼ less MS 4334.

Affecting approximately 1,049.29 acres in Pinal County, as follows:

T. 4 S., R. 8 E.,
Sec. 13, NE¼, W½SE¼SW¼, SE¼SE¼SW¼, N½SE¼, SW¼SE¼, SE¼, SE¼, SW¼SE¼SE¼.
T. 4 S., R. 9 E.,
Sec. 11, S½SE¼;
Sec. 26, N½N½, SW¼NE¼, S½NW¼;
Sec. 27, N½NW¼.
T. 5 S., R. 8 E.,
Sec. 34, lots 1 to 8, incl., 12, 14, 16 to 18, incl., 26, 27, 31 to 33, incl.
T. 5 S., R. 9 E.,
Sec. 8, W½NW¼NW¼SE¼.
T. 7 S., R. 4 E.,
Sec. 10, S½NE¼,SE¼;
Sec. 15, NE¼SE¼;
Sec. 21, W½SW¼.

Final determination on disposal will await completion of an environmental analysis.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the affected public lands from appropriation under the public land laws, and the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix Arizona 85027.

Dated: May 4, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-10896 Filed 5-7-92; 8:45 am]

BILLING CODE 4310-32-M

[(G-010-G2-0111-3110-10-G202; NMNM 68434)]

Albuquerque District, New Mexico; Realty Action; Exchange, Federal Surface in Santa Fe County, NM for Private Surface Within El Malpais National Conservation Area and National Monument in Cibola County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action on Proposed Land Exchange.

CORRECTION: In notice document 92–8301 in the first column of page 12941 in the issue of Tuesday, April 14, 1992, make the following correction: On the eighth line, the sentence should read "Secondly, this action as provided in 43 CFR 2201.1(b), shall segregate the public lands from all appropriation under the public land laws, including the mining and mineral leasing laws, subject to any prior valid rights."

Dated: April 24, 1992.

Robert T. Dale,

District Manager.

[FR Doc. 92–10753 Filed 5–7–92; 8:45 am]

BILLING CODE 4310-FB-M

[ID-942-02-4730-12]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., April 30, 1992.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and the subdivision of sections 29, 32, and 33, T. 11 S., R. 29 E., Boise Meridian, Idaho, Group No. 810, was accepted, April 28, 1992.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region IV, Sawtooth National Forest.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: April 30, 1992.

Gary T Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 92–10803 Filed 5–7–92; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Three Granite Outcrop Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for three granite outcrop plants: *Amphianthus pusillus* (amphianthus), *Isoetes melanospora* (black-spored quillwort), and *Isoetes tegetiformans* (mat-forming quillwort). Populations occur on private and public lands on granite outcrops in the Piedmont physiographic province of the Southeast. *Isoetes tegetiformans* is only known to Georgia. *Isoetes melanospora* is extant in Georgia and is historically known from South Carolina. *Amphianthus pusillus* occurs in both of these States, as well as in Alabama. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 31, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan are three granite outcrop plants: *Amphianthus pusillus* (amphianthus), *Isoetes melanospora* (black-spored quillwort), and *Isoetes tegetiformans* (mat-forming quillwort). All three species are rooted aquatics restricted to temporary pools formed in depressions on outcrops of granitic rock. These species were listed as endangered (the two *Isoetes*) and threatened (amphianthus) in 1988 due to their restricted ranges, the continuing destruction of habitat from quarrying activities, and degradation of habitat from pasturing, dumping, and heavy recreational use.

The recovery objectives of the proposed plan is to reclassify both *Isoetes* spp. to threatened and delist *Amphianthus pusillus*. This will be accomplished through:

(1) Protection and management of extant populations through landowner cooperation and regulatory means,

(2) Monitoring of extant sites and searching for additional populations,

(3) Reestablishment of additional populations (if determined to be necessary),

(4) Preserving genetic stock, and

(5) Educating the public on the importance of preserving these species and their habitat.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act. 16 U.S.C. 1533(f).

Dated: April 30, 1992.

James Stewart,

Acting Complex Field Supervisor.

[FR Doc. 92-10744 Filed 5-7-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-557-559 (Preliminary)]

New Steel Rails From Japan, Luxembourg, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-557-559 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan, Luxembourg, and the United Kingdom of new steel rails,[1] provided for in subheadings 7302.10.10 and 8548.00.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 15, 1992.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 1, 1992.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on May 1, 1992, by counsel on behalf of Steelton Rail Products & Pipe Division, Bethlehem Steel Corp., Steelton, PA, and CF&I Steel Corp., Pueblo, CO.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later then seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later then seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on May 22, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-205-3190) not later than May 20, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 28, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 4, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-10752 Filed 5-7-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 394 (Sub-No. 9)]

Cost Ratio for Recyclables; 1992 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of findings of 1992 recyclables aggregate compliance proceeding, and request for further comments.

SUMMARY: The Commission has completed its 1992 annual proceeding to determine which rates for nonferrous recyclable commodities shipped by railroad remained in aggregate compliance with the rate ceilings set pursuant to 49 U.S.C. 10731(e). The

[1] Specifically excluded from the scope of these investigations are imports of alloy steel rails and imports of "light rails," which are 30 kg. or less per meter, such as are used in amusement park rides. "Relay rails," which are used rails that have been taken up from a primary railroad track and are suitable to be reused as rails (such as on a secondary rail line or in a rail yard), are also excluded.

Commission is also seeking public comment on whether the regulations at 49 CFR 1145.4(f), which permit a railroad to make a showing of aggregate compliance on an individual basis for its single-line or combination rates, should apply to proportional rates or multiple independent factor through rates (MIFTRs).

DATES: Comments are due June 22, 1992. Replies are due July 20, 1992.

ADDRESSES: Send an original and 10 copies of comments and replies to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Craig Keats, (202) 927–6046; David Groves, (202) 927–6395; [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION:

The provisions of 49 U.S.C. 10731(e) require railroads to maintain rates at levels no higher than necessary to achieve revenue adequacy. The rate ceilings are expressed in terms of revenue-to-variable cost (R/VC) ratios, prescribed by the Commission on an annual basis.

In Ex Parte No. 394 (Sub-No. 3), Cost Ratios for Recyclables—Compliance Procedures, 8 I.C.C.2d 182 (1991), we adopted rules to measure railroad compliance with the rate ceilings. The regulations permit railroads to demonstrate compliance for various commodity groups on an industrywide basis, but the provisions of 49 CFR 1145.4(f) also allow carriers to make an alternative showing on an individual railroad basis for single-line or combination rates. Our decision finds that certain commodity groups are not in compliance, and hence that railroads must prejustify rate increases on such commodities. Our decision also seeks comments on whether the regulation at 49 CFR 1145.4(f) should be construed as permitting an individual railroad showing for proportional rates or MIFTRs.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write, call, or pick up in person from: The Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423, Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD Services (202) 927–5721].

Decided: April 30, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–10722 Filed 5–7–92; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 394]

Cost Ratio for Recyclables—1980 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Reopening of Recyclables Aggregate Compliance Proceeding.

SUMMARY: The Commission is reopening the proceeding in which it determined that rates for recyclable commodities shipped by railroad were in aggregate compliance with the rate ceiling set pursuant to 49 U.S.C. 10731(e). The purpose of the reopening is to reassess whether movements of nonferrous scrap metal from the former southern to the former eastern ratemaking territories during the period between 1982 and 1985 were in aggregate compliance with the rate ceiling.

DATES: Comments are due June 22, 1992. Replies are due July 21, 1992.

ADDRESSES: Send an original and 10 copies of comments and replies to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Craig Keats (202) 927–6046, David Groves (202) 927–6395, [TDD for hearing impaired (202) 927–5721].

SUPPLEMENTARY INFORMATION .

The provisions of 49 U.S.C. 10731(e) require railroads to maintain rates at levels no higher than necessary to achieve revenue adequacy. The rate ceiling is expressed in terms of a revenue-to-variable cost (r/vc) ratio, prescribed by the Commission on an annual basis.

In 1983, we found that the railroads overall had reduced their recyclables rates to levels that, in the aggregate, were in compliance with the rate ceiling. It has come to our attention, in the course of a complaint proceeding, that the rates on non-ferrous scrap metal (NFSM) moving from the former southern to the former eastern ratemaking territory in fact may not have been reduced to the proper levels. *See* No. 39886, *Huron Valley Steel Company* v. *Seaboard System Railroad, Inc.* (not printed), served Sept. 25, 1990, *vacated and remanded, CSX Transp., Inc.* v. *ICC*, 952 F.2d 500 (D.C. Cir. 1992). The purpose of this notice is therefore to solicit information about NFSM movements from the former southern to the former eastern territory other than those identified in the complaint.

Our intent is to have parties or other individuals identify and cost, using the "Rail Form A" costing methodology, all relevant movements during the complaint period that were not captured in the complaint. After we receive such information, we will aggregate all of the actual revenues and variable costs for each year and will determine the extent to which railroad rates on NFSM from, the former southern to the former eastern territory may have exceeded the appropriate level. Data is also requested for the time frame immediately following the complaint period up to and including December 31, 1991. Through rate reduction and reparations orders we will attempt to achieve aggregate compliance on NFSM rates from the former southern to former eastern territory. Parties may comment on whether the procedures proposed in the decision represent a reasonable way to construct (or reconstruct) an aggregate compliance proceeding.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write, call, or pick up in person from: The Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423, Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD Services (202) 927–5721].

Decided: April 30, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–10769 Filed 5–7–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31320]

Indiana & Ohio Railway Company—Construction and Operation of a Line of Railway—In Butler, Warren and Hamilton Counties, Ohio

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Availability of Financial Environmental Impact Statement.

SUMMARY: The Indiana and Ohio Railway Company has applied to the Interstate Commerce Commission for authorization to construct a 2.9 mile railroad in Butler, Warren and Hamilton Counties Ohio. The Commission

prepared its Draft Environmental Impact Statement (DEIS) which was served to all parties of record on May 17, 1991. Based upon a review of all comments to the DEIS, a review of the complete environmental record in this case, as well as our own independent analysis, the Commission has prepared a Final Environmental Impact statement (FEIS). The FEIS concludes that the proposed action could create potentially significant safety impacts for residents living adjacent to the proposed right-of-way. We, therefore, conclude that this proposal may have serious adverse effects on public health and safety which may significantly affect the quality of the human environment.

SUPPLEMENTARY INFORMATION: Copies of the FEIS have been served on all parties of record. Additional copies may be obtained from the Section of Energy and Environment, Office of Economics, room 3219, Interstate Commerce Commission, Washington, DC 20423. Questions regarding the document may be directed to John J. O'Connell or Elaine K. Kaiser, Section Chief at (202) 927–6215. Assistance for the hearing impaired is available through TDD Services at (202) 927–5721.

Dated: April 30, 1992.

By the Commission, Howard K. Face, Director, Office of Economics.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–10794 Filed 5–7–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree for Claims Under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy and 27 CFR 50.7, notice is hereby given that on May 4, 1992, a proposed Partial Consent Decree in *United States* versus *Smuggler-Durant Mining Corporation, et al.*, Civil Action No. 89–C–1802, was lodge with the United States District Court for the District of Colorado. The Complaint in this case was brought under section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, against several parties who are owners or operators of facilities at which hazardous substances are being released into the environment, or who owned or operated facilities at a time when hazardous substances were disposed of there. The United States' Complaint sought recovery of costs incurred and to be incurred by the United States in connection with the clean up of hazardous substances at the Smuggler Mountain Superfund Site in and adjacent to the City of Aspen, Colorado.

The proposed Partial Consent Decree involves the Atlantic Richfield Company ("ARCO") and the Department of Interior—Bureau of Mines ("DOI"). This decree settles claims brought by the United States against ARCO under Section 107(a) of CERCLA, 42 U.S.C. 9607(a). It also resolves the Environmental Protection Agency's potential administrative claims against the DOI and contribution claims under section 113 of CERCLA, 42 U.S.C. 9613, which would have been asserted by ARCO against DOI. The decree provides for payment of past and future response costs for the Site by ARCO ($1,626,000) and the Department of Interior ($1,626,000).

The Department of Justice will receive for a period of thirty (30) days from the date of entry of this publication comments relating to the proposed Partial Consent Decree. Comments should be addresed tthe Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* versus *Smuggler-Durant Mining Corporation, et al.*, DOJ Ref. No. 90–11–2–174.

The proposed Partial Consent Decree may be examined at the Environment and Natural Resources Division, Department of Justice Field Office, suite 945, 999 18th Street—North Tower, Denver, Colorado 80202 and at the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of the proposed Partial Consent Decree may also be examined at or obtained by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washngton, DC 20004 (202–347–7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $13 for the decree or $24.25 for the decree and attachments (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Divison.

[FR Doc. 92–10831 Filed 5–7–92; 8:45 a.m]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–26,898]

State Manufacturing Co., Inc.; New Philadelphia, PA; Negative Determination Regarding Application for Reconsideration

By an application dated April 17, 1992, the Amalgamated Clothing Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on April 7, 1992 and published in the **Federal Register** on April 20, 1992 (57 FR 14434).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact the increased import criterion and the "contributed importantly" test of the Worker Group Requirements of the Trade Act of 1974 were not met for Army dress coats in the period relevant to the worker petition.

It's claimed that the subject firm ceased making Army dress coats six months ago and has been making men's tailored clothing for the private market ever since.

Investigation findings show that State Manufacturing produced only Army dress coats for the Defense Department from 1989 to October 1991, when the contract was completed. Since October 1991, State produced some incidental men's clothing for the private market. This incidental work was a stop-gap measure while they waited for another defense contract. When no other defense contracts were forthcoming, State closed its plant. Since the production of men's clothing for the private market was less than one year, there is no period in which to compare State's production or sales.

Further, the Defense Appropriations Act requires that Army dress coats be produced from domestic manufacturers. Also, State Manufacturing does not import Army dress coats.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 1st day of May 1992.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 92-10812 Filed 5-7-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such a request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than May 18, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below not later than May 18, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of April 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Wellhead Systems, Inc (Co)	Odessa, TX	4/27/92	3/26/92	27,166	Oilfield Equipment.
AT & T (Wkrs)	New Orleans, LA	4/27/92	4/9/92	27,167	Telephone Equipment.
Perry Manufacturing (Wkrs)	Perryopolis, PA	4/27/92	4/7/92	27,168	Ladies' Suit Jackets.
Sedco Forex (Co)	Dallas, TX	4/27/92	4/7/92	27,169	Oil and Gas.
Petroleum, Inc (Wkrs)	Wichita, KS	4/27/92	4/8/92	27,170	Oil and Gas Production.
Patterson Drilling (Wkrs)	Snyder, Texas	4/27/92	4/13/92	27,171	Drill Oil Wells.
Milpark Drilling Fluids (Co)	Houston, Texas	4/27/92	4/13/92	27,172	Application of Mud at Well Sites.
Jomac Products, Inc (ACTWU)	Philadelphia, PA	4/27/92	4/1/92	27,173	Industrial Rainwear.
Mertz, Inc (Wkrs)	Ponca City, OK	4/27/92	4/17/92	27,174	Seismographic Vibrators.
Nicor Oil and Gas Corp (Wkrs)	Houston, TX	4/27/92	4/13/92	27,175	Oil, Gas Exploration, Production.
Brady Apparel, Inc. (ACTWU)	Templeten, PA	4/27/92	4/14/92	27,176	Ladies' & Mens' T-Shirts & Sweat Shirts.
Duncan Energy Co (Co)	Denver, CO	4/27/92	4/15/92	27,177	Oil and Gas.
Alaska United Drilling, Inc (Wkrs)	Anchorage, AK	4/27/92	4/15/92	27,178	Contract Drilling Services.
Tuboscope, Inc. (Wkrs)	Corpus Christi, TX	4/27/92	4/13/92	27,179	Oil, Gas Drilling, Exploration.
Volunteer Leather Co (AIW)	Whitehall, MI	4/27/92	3/14/92	27,180	Side Leather for Shoes.
Liberty Lumber Co., Inc (Co)	Arlington, WA	4/27/92	4/16/92	27,181	Cedar Lumber.
Daniel Bruce Marine (Wkrs)	Galiano, LA	4/27/92	4/1/92	27,182	Oil Rig Services.
Sandefer Oil and Gas (Co)	Houston, TX	4/27/92	4/14/92	27,183	Oil, Gas Exploration, Production.
LRC Surety Products, Inc (URW)	Carrollton, OH	4/27/92	4/13/92	27,184	Industrial Rubber Gloves.
TGX Corp (Wkrs)	Shreveport, LA	4/27/92	4/13/92	27,185	Crude Oil and Natural Gas.
Dynapower/Stratopower (IAMAW)	Watertown, NY	4/27/92	4/16/92	27,186	Hydraulic Pumps.
Milpark Drilling Fluids (Co)	Corpus Christi, TX	4/27/92	4/13/92	27,187	Application of Mud at Well Sites.
Milpark Drilling Fluids (Co)	Dallas, TX	4/27/92	4/13/92	27,188	Application of Mud at Well Sites.
Milpark Drilling Fluids (Co)	Lafayette, LA	4/27/92	4/13/92	27,189	Application of Mud at Well Sites.
Milpark Drilling Fluids (Co)	New Orleans, LA	4/27/92	4/13/92	27,190	Application of Mud at Well Sites.
Milpark Drilling Fluids (Co)	Denver, Colorado	4/27/92	4/13/92	27,191	Application of Mud at Well Sites.
Milpark Drilling Fluids (Co)	Laurel, Mississippi	4/27/92	4/13/92	27,192	Application of Mud at Well Sites.
Milpark Drilling Fluids (Co)	Anchorage, AK	4/27/92	4/13/92	27,193	Application of Mud at Well Sites.
Flowline Division (Reopened 4/6/92)	Whiteville, NC			26,299	Butt Weld Fittings, Flanges.

[FR Doc. 92–10814 Filed 5–7–92; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended 29 U.S.C. 1671(h)(1)), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Time and Date: The meeting will begin at 9 a.m. on June 2, 1992, and continue until close of business that day; and will reconvene at 9 a.m. on June 3, 1992, and adjourn at noon that day. From 2:15 to 5:15 p.m. on June 2 will be reserved for participation and presentations by members of the public.

Place: Pacific A, Holiday Inn on the Bay at the Embarcedero, 1355 North Harbor Drive, San Diego, California.

Status: The meeting will be open to the public.

Matters to be Considered: The agenda will focus on the Committee's response to the Department's initiative on enhancing the quality of Indian and Native American programs, the Department's responses to the motions of the March 5–6, 1992 meeting, reports of the subcommittees, Committee procedures, and various program issues.

Contact Person for More Information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, DC, 4th day of May, 1992.

Robert T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92–10811 Filed 5–7–92; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organizations, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determination, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY91–22 (Feb. 22,1991)..... p.95i, p.9521.
Virginia:
VA91–39 (Feb. 22, 1991)..... p. All.
VA91–47 (Feb. 22, 1991)..... p. All.

Volume II

Arkansas:
AR91–1 (Feb. 22, 1991)..... p. All.
AR 91–3 (Feb. 22, 1991)..... p. All.
Kansas:
KS91–6 (Feb. 22, 1991)..... p. All.
KS91–8 (Feb. 22, 1991)..... p. All.
KS91–12 (Feb. 22, 1991)..... p. All.
Michigan:
MI91–4 (Feb. 22, 1991)..... p. All.
MI91–7 (Feb. 22, 1991)..... p. All.
Nebraska:
NE91–3 (Feb. 22, 1991)..... p. All.
NE91–11 (Feb. 22, 1991)..... p. All.

Volume III

Alaska:
AK91–1 (Feb. 22, 1991)..... p. All.
Oregon:
OR91–1 (Feb. 22, 1991)..... p. All.
Utah:
UT91–13 (Feb. 22, 1991)..... p. All.
UT91–15 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be

purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three spearate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 1st Day of May, 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92–10566 Filed 5–7–92; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

Prohibited Transaction Exemption 92–31; Exemption Application No. D–8827, et al. Grant of Individual Exemptions; Connecticut National Bank, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor..

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department of Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Connecticut National Bank (the Bank) Located in Hartford, CT

[Prohibited Transaction Exemption 92–31; Exemption Application No. D–8827]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of Code, by reason of section 4975(c)(1)(A) through (E) shall not apply to the sale, on September 9, 1991, by the Hartford Steam Boiler Employees' Retirement Plan Trust (the Plan) to Hartford Steam Boiler Inspection and Insurance Company of certain promissory notes (the Notes) issued by the Hartford National Corporation, an affiliate of the Bank, which is the Plan's directed trustee, for the Plan's original acquisition cost of the Notes plus accrued interest provided: (1) The sales price of the Notes was not less than their aggregate fair market value on the date of the sale; (2) the sales price of the Notes was determined on the date of sale by an independent appraiser; (3) the sale was a one-time transaction for cash; and (4) the Plan did not pay any fees or commissions in connection with its acquisition, holding or subsequent sale of the Notes.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 25, 1992 at 57 FR 6534.

EFFECTIVE DATE: This exemption is effective as of September 9, 1991.

Written Comments. The Department received one written comment with respect to the notice of proposed exemption containing a request for a public hearing. The comment was submitted by a Plan participant who stated that he did not understand the substance of the transaction or the rationale for the requested exemption. The commentator believed that if the Department were to convene a public hearing these issues could be resolved. Following a discussion of these matters with a representative of the Department, the commentator decided to withdraw both his comment and hearing request.

Accordingly, after consideration of the entire record, including the written comment submitted, the Department has determined to grant the exemption as it was initially proposed.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Ricks Exploration, Inc. 401(k) Trust (the Plan) Located in Oklahoma City, Oklahoma

[Prohibited Transaction Exemption 92–32; Exemption Application No. D–8894]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Plan of a Guaranteed Investment Contract (the GIC) of Mutual Benefit Life Insurance Company to Ricks Exploration, Inc., a party in interest with respect to the Plan, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GIC at the time of the transaction; (3) the Plan's independent fiduciary, PW Trust Company (PW) has determined that the sales price is not less than the current fair market value of the GIC; and (4) PW has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 11, 1992 at 57 FR 8686.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Prison Fellowship Ministries; Prison Fellowship International; and Justice Fellowship, Located in Reston, Virginia

[Prohibited Transaction Exemption 92–33; Exemption Application Nos. D–8816, D–8817, and D–8818]

Exemption

The restrictions of section 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Prison Fellowship Ministries Unit Benefit Pension Plan (the Plan) of a note (the Note) to the Pension Fellowship Ministries, one of the contributing employers to the Plan and the holder of another note secured by the same collateral that secures the Note; provided that the following conditions are met: (a) The fair market value of the Note is determined by an independent qualified appraiser; (b) the Plan receives on the date of the sale the greater of the fair market value of the Note, or the principal balance plus accrued interest due under the Note; and (c) the sale will be for cash and the Plan will pay no costs or expenses associated with the transaction.

Written Comments

The Department received no requests for hearing, but did receive telephone comments from three interested persons, who expressed concern about the impact of the exemption on the ability of the Employer to make timely distributions from the Plan. In addition, the applicant submitted one written comment with respect to the notice of proposed exemption (the Notice). In the comment letter, the applicant informed the Department that on February 3, 1992, the Internal Revenue Service (IRS) had issued a favorable determination letter in connection with the termination of the Plan. The IRS determination letter indicates that distributions on account of the termination of the Plan are to be made "as soon as administratively possible." Accordingly, this information submitted by the applicant is incorporated into the complete record of the application file.

After giving full consideration to the entire record, including the written comment, and the fact that the Plan's termination will allow distributions to participants, the Department has decided to grant the exemption.

All comments submitted to the Department are included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department are made available for public inspection in the Public Documents Room of the Pension Welfare Benefits Administration, room N–5507, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice published on March 11, 1992, at 57 FR 8688.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of May, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–10809 Filed 5–7–92; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–8715, et al.]

Proposed Exemptions; Signet Trust Company, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of proposed

exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Signet Trust Company (Signet Trust) Located in Richmond, Virginia

Application No. D–8715

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by Signet Asset Management (SAM), an affiliate of Signet Trust, from The SBK Select Series (the Funds), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser for the Funds, in connection with the investment by certain individual retirement accounts (IRAs) to which Signet Trust serves as a trustee with investment management responsibility, provided that the following conditions are met:

(a) No sales commissions are paid by the IRAs for the purchase or sale of shares of the Funds and no redemption fees are paid for the sale of shares by the IRAs to the Funds;

(b) Each IRA receives a rebate from Signet Trust, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the IRA grantor, of such IRA's proportionate share of all investment advisory fees charged to the Funds by SAM within no more than two business days of the receipt of such fees by SAM;

(c) The grantor of the IRA, as a second fiduciary (the Second Fiduciary) who is independent of Signet Trust and its affiliates, receives full written disclosure of information concerning the Funds (including a current prospectus for the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the investment of assets of the IRA in the Funds, the fees to be paid by the Funds to SAM, and the purchase of additional shares of the Funds by the IRA with the fees rebated to the IRA by Signet Trust;

(d) The authorization referred to in paragraph (c) is terminable at will by the Second Fiduciary, without penalty to the IRA, upon receipt by Signet Trust of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the IRA, without penalty to the IRA, upon receipt by Signet Trust of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of Signet Trust to engage in the transactions described in paragraph (c) on behalf of the IRA;

(e) All dealings between the IRAs and the Funds are on a basis no less favorable to the IRAs than dealings with other shareholders of the Funds;

(f) Signet Trust maintains for a period of six years the records necessary to enable the persons described below in section (g) to determine whether the conditions of this proposed exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Signet Trust or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(g)(1) Except as provided in paragraph (2) of this section (g), the records referred to in section (f) are unconditionally available at their customary location for examination during normal business hours by—

(i) any duly authorized employee or representative of the Department or the Internal Revenue Service, and

(ii) Any individual establishing or maintaining such IRAs or a duly authorized representative of such individual;

(2) None of the persons described in section (g)(1)(ii) shall be authorized to examine trade secrets of Signet Trust, any of its affiliates, or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. Signet Trust is a wholly-owned subsidiary of Signet Banking Corporation, a bank holding company which conducts banking business in Virginia, Maryland and the District of Columbia. Signet Trust has its principal office located at 7 North Eighth Street, Richmond, Virginia. As of December 31, 1990, the total trust assets of Signet Trust were approximately $8 billion. Signet Trust acts as trustee with investment management responsibility for certain IRAs, with assets totalling approximately $25 million. Signet Trust's status as a fiduciary with investment discretion for an IRA arises out of its relationship as a trustee with investment responsibility for the IRA, but does not result from providing investment advice to a third party that has investment discretion for the IRA.

Signet Trust proposes to invest assets of IRAs over which it acts as a trustee and investment manager in certain shares of the Funds pursuant to an initial written authorization, and an annual reauthorization, of the investment from the IRA grantor.[1] The IRA grantor will be an individual responsible for maintaining the IRA who is not an employee of Signet Trust or its affiliates. The IRA grantor will act as an independent fiduciary (i.e. the Second Fiduciary) of the IRA for purposes of authorizing Signet Trust to invest assets of his or her IRA in the Funds and to reinvest in the Funds fees rebated to the IRA as a result of such investment (as described below). Signet Trust will invest assets of the IRAs in any of the Funds for which it has received written authorization for such investment from the Second Fiduciary during the period that such authorization is effective.

2. The Funds are Massachusetts business trusts organized on June 20, 1990 as a open-end, diversified management investment company registered under the Investment Company Act of 1940. There are currently four Funds which are designed to offer trust accounts and institutional investors a means of accumulating an interest in a diversified group of investments. The Funds are described as

[1] Signet Trust represents that transactions with the Funds by IRAs for which it acts as a nondiscretionary trustee are not covered by the proposed exemption.

follows: (i) The Money Market Fund, which invests in money-market instruments providing current income; (ii) the Treasury Money Market Fund, which invests in U.S. Treasury securities providing current income with stability of principal; (iii) the Income Fund, which invests in securities with a duration of seven years or less; and (iv) the Value Equity Fund, which invests in equity securities providing the potential for long-term growth of capital and income. Signet Trust contemplates that additional Funds may be established in the future. Shares of the Funds are offered and sold to eligible investors. Certain shares, identified by each prospectus as Trust Shares, will be offered to trust accounts for which Signet Trust is a trustee. If the proposed exemption is granted, Signet Trust would invest assets of IRAs only in the Trust Shares. Thus, all references herein to the proposed transactions involving the IRAs refer only to the Trust Shares described by the prospectus for each Fund.

Investments of IRA assets in the Funds will occur either through the direct purchase of shares of the Funds for an IRA by Signet Trust, the transfer by Signet Trust of IRA assets from one Fund to another Fund, or an automated sweep of uninvested cash of an IRA into the Funds by Signet Trust at the end of each business day. All such investments will be made pursuant to the Second Fiduciary's written authorizations and annual reauthorizations to Signet Trust. In this regard, the IRA assets swept into the Funds would be invested in either the Money Market Fund or the Treasury Money Market Fund.

3. Federated Securities Corporation (FSC) is the principle distributor for all shares of the Funds including Trust Shares which would be sold to the IRAs. The applicant states that there are no fees for distribution expenses, pursuant to Rule 12b–1 under the Investment Company Act of 1940, paid to FSC with respect to the Trust Shares. However, the Trust Shares are charged for certain administrative expenses of the Funds. FSC is a subsidiary of Federated Investors (Federated) which, through other subsidiaries, acts as the Transfer and dividend disbursing agent for the Funds and provides certain personnel and administrative services for the Funds. Federated and its subsidiaries are unrelated to Signet Trust. State Street Bank and Trust Company of Boston, which is also unrelated to Signet Trust, is the custodian for the securities and cash of the Funds.

4. SAM acts as the investment adviser for the Funds pursuant to investment advisory agreement with the Funds which allow SAM to receive an annual investment advisory fee based on a percentage of the average daily net assets of each of the Funds. The advisory agreement with SAM, and the fees which are received by SAM, have been approved by the Board of Trustees of the Funds (the Funds' Trustees), as required by applicable law. Any changes in the fees charged by SAM for investment advisory services to the Funds will be approved by the Funds' Trustees. All of the Funds' Trustees are independent of Signet Trust and its affiliates.

With respect to the proposed investment in the Funds by the IRAs, Signet Trust states that it will rebate to each IRA such IRA's proportionate share of all investment advisory fees charged by SAM to the Funds. Thus, all investment advisory fees paid to SAM by a Fund which result from any increases in the average daily net assets of the Fund by an investment of IRA assets will be rebated to the IRA. Such fee increases could occur either by a direct purchase by an IRA of shares of a Fund, the transfer of IRA assets from one Fund to another fund, or a daily automated sweep of an IRA's uninvested cash into a Fund by Signet Trust (see Item #6 below).

5. Signet Trust represents that the interests of the IRAs would be furthered by having available the option to collectively invest assets of the IRAs in the Funds rather than in group trusts established by Signet Trust or in other mutual funds. The Funds provide an opportunity for the IRAs to economically participate in diversified portfolios in several asset classes that are actively managed by SAM. Signet Trust states that its investment responsibilities to the IRAs are enhanced when it uses the Funds, rather than other mutual funds managed by unrelated entities, because of its knowledge of SAM's investment policies.

Signet Trust represents that the Funds are preferable to group trusts maintained by Signet Trust because the Funds are valued on a daily basis whereas the group trusts, other than money-market trusts, are valued monthly. The daily valuation permits (i) the immediate investment of contributions to an IRA, (ii) greater flexibility in transferring assets from one type of investment to another, and (iii) daily redemption of Fund shares for purposes of making distributions under an IRA. Other benefits include the availability of in-kind distributions and more complete and faster reporting of information to the IRA grantors. Information concerning the investment performance of the Funds will be available on a daily basis in newspapers of general circulation which will allow grantors of the IRAs to monitor the performance of the Funds on a daily basis rather than monthly, quarterly, semi-annually or, in some instances, annually through reports generated by Signet Trust. In addition, all of the Funds will be available for investment by the IRAs, whereas certain group trusts are unavailable to the IRAs because of restrictions imposed by securities law.

6. Signet Trust states that the proposed fee structure (the Fee Structure) has been designed to assure that the fees charged by Signet Trust or its affiliates to an IRA will be the same regardless of whether the assets of the IRA are invested in the Funds, in certain group trusts sponsored by Signet Trust, or in other investments. The Fee Structure is described as follows:

(a) Signet Trust will charge its standard fees to all IRAs for serving as a trustee with investment responsibility [2] Signet Trust provides such services to the IRAs, including sweep services for uninvested cash balances in the IRAs, under a single fee arrangement which is calculated as a percentage of the market value of the IRA assets under management. There are no separate charges for the provision of sweep services to the IRAs.[3]

(b) SAM will charge the Funds for its services to the Funds as investment adviser in accordance with its agreements with the Funds. Under the present investment advisory agreements, SAM could receive an annual investment advisory fee of up to .5% of each Fund's average daily net assets, except in the case of the Value Equity Fund from which SAM could receive up to .75% of such Fund's average daily net assets. The fee differentials among the Funds result from the level of service rendered by SAM to such Funds.

(c) SAM's fees from all of the Funds are accrued on a daily basis and billed

[2] The Department is not proposing any exemptive relief herein for fees paid by the IRAs directly to Signet Trust or any affiliates for the provision of services. In this regard, see section 4975(d)(2) of the Code and § 54.4975–6 of the regulations.

[3] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks, and the potential applicability of certain statutory exemptions as described therein.

by SAM at the end of each month, except for the Value Equity Fund which is billed by SAM on a quarterly basis.

(d) At the end of each month or, in the case of the Value Equity Fund, at the end of each quarterly period, Signet Trust will rebate to each IRA such IRA's pro rata share of all investment advisory fees charged by SAM to the Funds (the Rebate Program) within no more than two business days of the receipt of such fees by SAM. Signet Trust represents that the rebated fees will be paid to the IRA in cash, except that the rebate may be effectuated through the purchase of additional shares of the particular Funds which paid SAM such fees, pursuant to an annual election made by the IRA. All decisions regarding the use of rebated fees to purchase additional shares of a Fund will be made by the Second Fiduciary.

Signet Trust states that the Fee Structure will be at least as advantageous to the IRAs as an offset or credit arrangement whereby fees paid by the Funds to SAM would be offset against other fees charged directly by Signet Trust to the IRAs.[4] The Rebate Program will ensure that Signet Trust will not receive any additional fees from the Funds as a result of the IRAs investing in the Funds. Thus, the Fee Structure with the Rebate Program essentially will have the same effect in offsetting SAM's fees received from the Funds as an arrangement allowing for a credit of such fees against other fees charged directly to the IRAs by Signet Trust. Signet Trust prefers the Fee Structure with the Rebate Program because it allows Signet Trust to maintain a fixed fiduciary fee schedule for services to the IRAs, which is more administratively feasible and less costly than a system which credits such fiduciary fees with the investment advisory fees paid by the Funds to SAM.

Signet Trust is responsible for establishing and maintaining a system of internal accounting controls for the Rebate Program. In addition, Signet Trust will retain the services of Ernst & Young (the Auditor) in Richmond, Virginia, an independent accounting firm, to audit annually the rebating of fees to the IRAs under the Rebate Program. Signet Trust states that such audits will provide independent verification of the proper rebating to the IRAs of fees charged by SAM to the Funds. Signet Trust states further that information obtained from the audits will be used in the preparation of required financial disclosure reports for the IRAs.

By letter dated November 6, 1991, the Auditor describes the procedures which will be used in the annual audit of the Rebate Program. The Auditor will: (i) Obtain the calculation of the daily actual balances for all the Funds and for the total IRA shareholders of such Funds; (ii) obtain a detailed list of the expenses charged to the Fund's shareholders by type of expense; (iii) obtain calculations of the total expenses charged by SAM to each Fund which are reimbursable to the IRAs; (iv) recalculate the ratio used to determine the amount of expenses to be rebated to each IRA; and (v) recompute, in total, the number of shares issued to the IRAs in connection with the rebate of each IRA's expenses to ensure that the proper number of shares were issued to the IRAs under the Rebate Program. In addition, for one month selected at random during each calendar quarter, the Auditor will (i) obtain a listing of the rebates paid to each IRA regarding the IRA's shares in each of the Funds to determine that the total rebate paid to the IRA by Signet Trust equals the total amount that was required to be rebated under the Rebate Program, and (ii) recalculate the amount of the rebates given to all of the IRAs to ensure that the rebate ratio was proper.

In the event either the internal audit by Signet Trust or the independent audit by the Auditor identifies that an error has been made in the rebating of fees to the IRAs, Signet Trust will correct the error. With respect to any shortfall in rebated fees to an IRA involving cash rebates, Signet Trust will make a cash payment to the IRA equal to the amount of the error plus interest paid at money market rates offered by Signet Trust for the period involved. With respect to any shortfall in rebated fees involving an IRA where the Second Fiduciary's prior election was to have rebated fees invested in shares of a particular Fund, Signet Trust will make a cash payment equal to the amount of the error plus interest based on the rate of return for the shares of the Fund which would have been acquired during the period involved. Any excess rebates made to an IRA will be corrected by an appropriate deduction and reallocation of cash to the IRA during the next payment period to accurately reflect the amount of total rebates due to the IRA for the period involved.

7. The grantor of the IRA, as the Second Fiduciary who is independent of Signet Trust and its affiliates, will receive full written disclosure of information concerning the Funds and, on the basis of such information, will authorize in writing the investment by Signet Trust of assets of his or her IRA in the Funds, the fees to be paid by the Funds to SAM, and the purchase of additional shares of the Funds by the IRA with the fees rebated to the IRA by Signet Trust. The authorization will be terminable at will by the Second Fiduciary, without penalty to the IRA, upon receipt by Signet Trust of written notice of termination. A form expressly providing an election to terminate the authorization with instruction on the use of the form will be supplied to the Second Fiduciary no less than annually. The instructions for such form will include the following information:

(a) The authorization is terminable at will be the IRA, without penalty to the IRA, upon receipt by Signet Trust of written notice from the Second Fiduciary; and

(b) Failure to return the form will result in continued authorization of Signet Trust to engage in the subject transactions on behalf of the IRA.

Signet Trust states that the Second Fiduciary will receive a current prospectus for each Fund and a written statement giving full disclosure of the Fee Structure. The disclosure statement will explain why Signet Trust believes the investment of assets of the IRA in a particular Fund is appropriate. The disclosure statement will also describe whether there are any limitations on Signet Trust with respect to which IRA assets may be invested in shares of the Funds and, if so, the nature of such limitations.[5]

[4] See Prohibited Transaction Exemption 77–4 (42 FR 18732, April 8, 1977). PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rate share of investment advisory fees paid by the investment company.

[5] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

8. No sales commissions will be paid by the IRAs in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees will be paid in connection with the sale of shares by the IRAs to the Funds. The applicant states that all other dealings between the IRAs and the Funds, Signet Trust or any affiliated person, will be on a basis no less favorable to the IRAs than such dealings are with the other shareholders of the Funds.

9. In summary, Signet Trust represents that the proposed transactions will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Funds will provide the IRAs with more effective investment vehicles than group trusts currently maintained by Signet Trust, without any increase in fees paid to Signet Trust or its affiliates; (b) Signet Trust will require annual audits by an independent accounting firm to verify the proper rebating to the IRAs of fees charged by SAM to the Funds; (c) investments in the Funds by the IRAs and the payment of any fees by the Funds to SAM will require an authorization in writing by a Second Fiduciary for the IRA after full written disclosure in all cases to the Second Fiduciary, including a current prospectus for each Fund and a statement describing the Fee Structure; (d) any authorization made by the IRA will be terminable at will by the IRA without penalty to the IRA, upon receipt by Signet Trust of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization, which will be supplied to the Second Fiduciary no less than annually; (e) no sale commissions or redemption fees will be paid by the IRAs in connection with the acquisition or sale of shares of the Funds; and (f) all dealings between the IRAs and the Funds, Signet Trust, or any affiliated person, will be on a basis no less favorable to the IRAs than such dealings are with the other shareholders of the Funds.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Bricklayers, Masons and Plasterers Local Union #4 Pension Fund (the Bricklayers Plan); Cambia County Pension Plan (the Cambia Plan); Retirement Plan for Employees of Conemaugh Valley Memorial Hospital (the Conemaugh Plan); United States National Bank Pension Plan (the Bank Pension Plan); United States National Bank Profit Sharing Plan (the Bank P/S Plan); Revised Pension Plan for Employees of Lee Hospital (the Lee Plan); and Retirement Plan for Employees of Windber Hospital and Wheeling Clinic (the Windber Plan) (collectively, the Plans)

Located in Pittsburgh, Johnstown, and Windber, PA

Application Nos. D–8729 through D–8732

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of section 406(a), (b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to a proposed transaction involving the sale by the Plans of their participation interests in a secured second mortgage note, as amended, (the Amended Second Mortgage Note) to the United States National Bank (the Bank); provided that: (a) Independent fiduciaries of the Plans determine that the terms of the proposed transaction are no less favorable to the Plans than those obtainable by unrelated third parties in similar circumstances; and (b) the purchase price paid by the Bank is the greater of the amounts indicated in paragraph number 6 below of the summary of Facts and Representatives or the fair market value of the Plans' interests in the Amended Second Mortgage Note as determined by an independent qualified appraiser on the date the sale is executed.[6]

Summary of Facts and Representatives

1. Seven plans are involved in the proposed exemption, one defined contribution profit sharing plan, five defined benefit pension plans, and one governmental plan.[7] As of December 31, 1990, these Plans had assets totaling $63,883,000 of which approximately $2,873,000 consisted of debt obligations secured by interests in real property. As of the same date, the Plans had a total of 4,836 participants of which 3,848 were active and 988 consisted of former participants, retirees, or beneficiaries entitled to receive benefits from their respective Plans.

The Bank currently serves as the trustee for all of the Plans and is a party in interest and fiduciary with respect to the Plans, pursuant to section 3(14)(A) of the Act. It is also represented that either: (1) The sponsors of each of the Plans, or (2) certain committees (composed of officers, directors, or employees of the plan sponsors, trustees of plan assets, or members of union locals) also serve as fiduciaries for each of the Plans (the Plan Fiduciaries). The fiduciaries for the Conemaugh Plan, the Lee Plan, and the Windber Plan are the respective sponsors of those Plans. The fiduciary for the Bank Pension Plan and the Bank P/S Plan is a pension committee composed of six members appointed by the Board of Directors of the Bank. Of the six members who serve on the Bank's pension committee, two are individuals from Local No. 8204 of the United Steelworkers of America who represent bargaining-unit employees of the Bank, two are non-employee directors of the Bank, and two are officers of the Bank. A committee also serves as the fiduciary for the Bricklayers Plan. After consultation with legal counsel with regard to the fiduciary obligations imposed by the Act, the Plan Fiduciaries have acknowledged their fiduciary responsibilities to their respective Plans and have accepted the duties and liabilities of fiduciaries, as set forth in the Act. It is represented that some of the Plan Fiduciaries have existing relationships with the Bank in the form of checking accounts, other deposit accounts, and outstanding loans. In addition, the president of the Conemaugh Plan sponsor also serves on the Board of Directors of the Bank.

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[6] For purposes of this proposed exemption references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

The Department wishes to point out that the exemptive relief being proposed herein extends only to those sections of the Act as described above. Also, it is represented that the Bank is a national bank which is subject to the authority of the Office of the Comptroller of the Currency. In this regard, the Office of the Comptroller of the Currency has informed the Department that a transaction that may be prohibited under the Act also may be a violation of the National Bank Act or constitute an unsafe or unsound banking practice, and that the exemption does not address the safety and soundness or the legality of the proposed transaction under the National Bank Act. Accordingly, the Bank should satisfy itself that the transaction does not violate the National Bank Act or constitute an unsafe or unsound banking practice.

[7] It is represented that the Cambria Plan is a governmental plan, as defined under section 3(32) of the Act and as such is exempt from coverage under title I of the Act, pursuant to section 4(b)(1). Accordingly, the Bank is not seeking exemptive relief for the proposed transaction with respect to the Cambria Plan.

However, it is represented that the president of the Conemaugh Plan sponsor is not a fiduciary with respect to the Conemaugh Plan. The Bank represents that these relationships with the Plan Fiduciaries are *de minimis* in that the income derived by the Bank from such relationships constitutes less than one percent (1%) of the Bank's yearly gross revenue. It is further represented that the Plan Fiduciaries are independent of the Bank in that neither owns nor otherwise controls the other.

2. On August 25, 1983, the Bank, which at the time was acting as the investment manager on behalf of the Plans, purchased with some of the assets of the Plans various participation interests in a second mortgage note (the Original Second Mortgage).[8] It is represented that the Plans participated in the Original Second Mortgage to the extent of $1,650,000 and that the Northern Central Bank, an unrelated third party, also participated in the Original Second Mortgage to the extent of $1,275,000. It is represented that the Bank did not participate in the Original Second Mortgage on its own behalf. The principal of the Original Second Mortgage was due at maturity on August 1, 1993, or was extendable at the option of the mortgagor to August 1, 1994. Interest only payments at the fixed rate of 12% on the total principal amount of $2,925,000 were made on the Original Second Mortgage. The Original Second Mortgage was secured by Pinewood Estate Apartments, a commercial real estate complex located at 1401 Pennsylvania, NE., Albuquerque, New Mexico (the Property).

3. The Property is described as a 354-unit garden apartment complex, constructed in 1977, consisting of 26 two-story and three-story buildings. A 885 space uncovered parking lot, a one-story clubhouse, four laundry rooms, two outdoor swimming pools, and other recreational facilities are also located on the Property. The Property is situated on 12.998 acres of land owned by the University of New Mexico which is subject to a 37 year ground lease, renewable for two terms of 25 years and 8 years, respectively. As of July 23, 1990, Frederick E. Chin, MAI, Senior Manager Real Estate Appraisal, with Kenneth Leventhal, Co, an independent qualified appraiser, established the value of the Property at $7,500,000.

In addition to the Original Second Mortgage, the Property served as collateral for first and third mortgages held respectively, by the Manhattan Saving Bank and the LaJolla Sierra Group, unrelated third parties. The total indebtedness secured by the Property is approximately $6,981,000. The mortgager on the total indebtedness, including the amount of Original Second Mortgage, is Sovereign Realty 1983–XII dba Pinewood Estates (Sovereign), an unrelated third party with respect to the Plans.

4. Sovereign is a New Mexico limited partnership formed on August 23, 1983, for the purpose of acquiring and operating the Property. The general partners of Sovereign are Hinkle-Keeran and Deilwydd Properties 302 Ltd. Until March 1990, Hinkle-Keeran was the manager of the Property but was replaced by Steve Miller Associates. Sovereign has also sought and obtained consent from its limited partners to remove Hinkle–Keeran as general partner.

5. It is represented that in 1987 Sovereign experienced cash flow shortages, defaulted in paying interest from May through December of that year, and requested a renegotiation of the Original Second Mortgage. Accordingly, the holders of the first, second, and third mortgages on Sovereign's total indebtedness agreed to refinance and amended the terms of their respective notes. A summary of the terms of the Plans' interests in the Amended Second Mortgage Note, as negotiated on behalf of the Plans by the Bank during 1987 and 1988, are as follows:

(a) fifty percent (50%) of the defaulted interest due to the Plans on the Original Second Mortgage was added to the principal increasing the face value of the Plans' portion of Amended Second Mortgage Note to $1,724,250;

(b) the other fifty percent (50%) of the defaulted interest due to the Plans on the Original Second Mortgage and the Bank's legal fees of approximately $36,000 became payable at the maturity of the Amended Second Mortgage Note;

(c) maturity on the Amended Second Mortgage Note was accelerated to August 1, 1992, with a provision for a one year extension to August 1, 1993, if agreed to by the holders of all three mortgages;

(d) interest on the principal of the Amended Second Mortgage Note ($1,724,250) accrues at the rates of 12% per annum, but interest only payments at variable rates of from 7% to 12% apply during the period from 1988 through 1993;

(e) the difference between amount of interest due under the accrued rate of 12% and the amount of interest payable at the variable rate of between 7% to 12% is due on maturity of the Amended Second Mortgage Note;

(f) Sovereign agreed to make $250,000 in capital improvements to the Property;

(g) a provision from the Original Second Mortgage was retained with respect to the Plans' right to be paid twenty percent (20%) of the equity in the Property upon the earlier of the maturity date or the subsequent refinancing of the Amended Second Mortgage Note; and

(h) to the extent Sovereign has net cash flow, commencing on March 1, 1988, and continuing on the first of each month thereafter, Sovereign must make certain installment payments for the purpose of reducing the amounts indicated in subparagraph 5(b) above. In addition, to the extent such installment payments are applied, they will also reduce, dollar-for-dollar the amounts indicated in subparagraph 5(g) above.

In 1990, Sovereign requested an interest holiday for six to nine months in order to generate cash flows to make payments to creditors. As a result, during seven months in 1990, Sovereign failed to make interest payment to the Plans of approximately $90,523 based on an interest rate of 9%, the variable rate then in effect, on the Plans' participation in the $1,724,250 principal of the Amended Second Mortgage Note. It is represented that the Bank, on behalf of the Plans, agreed to add the $90,523 to the amount of the defaulted interest due to the Plans from the Original Second Mortgage, which is payable upon maturity under the terms of the Amended Second Mortgage Note, as described in subparagraph 5(b) above.

Thereafter, it is represented that Sovereign again defaulted under the terms of the Amended Second Mortgage Note and on March 13, 1992, filed a Chapter 11 bankruptcy petition. As permitted under the terms of the Amendment Second Mortgage Note, the Bank, on behalf of the Plans, has filed a motion in conjunction with the other second mortgage holder, Northern Central Bank, for appointment of a receiver to take possession of the Property and to collect the rents when due. The Bank represents that it would be in the interest of each of the Plans to sell its participation interest in the Amended Second Mortgage Note to the

[8] The Department notes that the decisions by the Bank, on behalf of the Plans, to invest in and continue holding participation interests in the Original Second Mortgage are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the Bank's decisions in this regard.

Bank and avoid involvement in the bankruptcy litigation.[9]

6. It is represented that the Bank after review of the Amended Second Mortgage Note offered to the Plan Fiduciaries the proposed transaction which is the subject of this exemption application. This transaction involves too steps: (a) The sale by each of the Plans of its participation interest in the Amended Second Mortgage Note to the Bank for an amount equal to each of the Plans respective proportionate interests in the face value (1,724,250 of the Amended Second Mortgage Note; and (b) thereafter, upon maturity of the Amended Second Mortgage Note, the payment by the Bank to each of the Plans of its proportionate share of any amount, which the Bank actually receives from the defaulted interest due to the Plans on both the Original Second Mortgage Note and the Amended Second Mortgage Note (see subparagraphs 5(b) and 5(e) above), plus the value of the Plans' equity interest in the Property (see subparagraph 5(g) above), less the aggregate amount of certain expenses advanced by the Bank (see subparagraph 5(b) above.

The Bank represents that such expenses pertain to the Bank's administration of the asset and do not relate to the sale of the Plans' interests in the Amended Second Mortgage Note to the Bank. With regard to these expenses the Plan Fiduciaries agreed in 1987–88 that the Bank should receive maturity of the Amended Second Mortgage Note reimbursement for payment of certain legal fees. In addition, the Plan Fiduciaries represent that in 1990 the Bank incurred costs for the appraisal of the Property and other research, investigation, and collection expenses. The Plan Fiduciaries believe that such costs and expenses advanced by the Bank on behalf of the Plans should not be borne by the Bank, in the event sufficient amounts are recovered upon maturity of the Amended Second Mortgage Note. Accordingly, the Plan Fiduciaries have agreed to the second step of the proposed transaction; provided that the recovery of such costs and expenses by the Bank do not include amounts expended by the Bank in obtaining this proposed exemption. In addition, it is represented that the Plans will incur no fees, commissions, or other costs in connection with the sale of their participation interests in the Amended Second Mortgage Note to the Bank.

7. Donaldson, Luftkin, and Jenrette Securities Corporation (DL&J), a qualified, independent appraiser, was engaged to determine the appropriate fair market value of the Plans' interests in the Amended Second Mortgage Note. As of April 8, 1991, DL&J established the value of the Plans' interests in the Amended Second Mortgage Note to be in the range of $725,000 to $1,100,000 or approximately 42% to 63% of the outstanding principal balance due to the Plans under the terms of the Amended Second Mortgage Note. Subsequently, at the request of the Department, DL&J updated this appraisal on July 18, 1991, and established $912,000, the midpoint of the range, as the best single estimate for the value of the Plans' participation interests in the Amended Second Mortgage Note.

8. The Plan Fiduciaries have reviewed and accepted the proposed two-step transaction with the Bank, because they believe it is unlikely that a third party purchaser for the Plans' interests in the Amended Second Mortgage Note could be found. Even if such a purchaser were available, the Plan Fiduciaries calculate that the fair market value of their participation interests in the Amended Second Mortgage Note, as established by DL&J, is approximately fifty-three percent (53%) of the face value of such interests. The Plan Fiduciaries point out that the Plans risk greater losses, as Sovereign is again in default on interest payments due under the terms of the Amended Second Mortgage Note and has filed for protection in bankruptcy. Furthermore, in the event of a foreclosure, the value of the Property may be insufficient to cover the outstanding debt plus the legal and other costs of a foreclosure sale. Accordingly, the Plan Fiduciaries are unwilling to invest approximately $2.26 for each $1.00 they have currently invested in the Amended Second Mortgage Note in order to buy out the first mortgage holder and force a foreclosure on the Property. Each of the Plan Fiduciaries represents that it is in the interest of the Plans to receive repayment of their respective principal investments which is approximately twice the fair market value of the Plans' interests in the Amended Second Mortgage Note, as determined by DL&J. [10] If the proposed exemption were granted the Bricklayers Plan, the Conemaugh Plan, the Windber Plan, and the Lee Plan, respectively, would receive $104,500; $313,500; $52,250; and $365,750 and the Bank Pension Plan and the Bank P/S Plan would receive respectively, $156,750 and $209,000 for an aggregate amount of $365,750. In addition the Cambia Plan would receive $522,500.

In the opinion of the Plan Fiduciaries the investment performance of the Plans will be improved by reinvesting the proceeds from the proposed transaction in other assets which will produce a suitable return. Approximately $1,201,750 or 1.88% of the total assets of the Plans, not including the Cambia Plan assets, will be involved in the proposed two-step transaction. The percentage involved of the assets of each of the Plans ranges from 1.37% to 3.88%.

With respect to the feasibility of the proposed transaction, the Plan Fiduciaries have represented their intention to monitor and enforce the rights of their respective Plans. With regard to the second step of the proposed transaction which will occur upon the maturity of the Amended Second Mortgage Note, the Plan Fiduciaries have represented that they will take reasonable action to enforce the rights of the Plans to the payment of items referred to in subparagraphs 5(b), 5(e), 5(g), and 5(h) above.

9. In summary, the Bank, as applicant, represents that the proposed two-step transaction satisfies the criteria of section 408(a) of the Act because:

(a) the sale of the Plans' participation interests in the Amended Second Mortgage Note is a one-time transaction for cash;

(b) the Plans will be able to sell their participation interests in the Amended Second Mortgage Note at its face value which is not less than the fair market value of such interests, as determined by DL&J, a qualified, independent appraiser;

(c) the Plans will be able to improve the investment performance of their portfolios by investing the proceeds from the sale in other assets with suitable returns;

(d) the Plan Fiduciaries have determined that the proposed two-step transaction is appropriate for and in the interest of their respective Plans;

(e) the Plan Fiduciaries have determined that it is in the interest of the Plans to avoid involvement in

[9] The Department notes that the renegotiation by the Bank of the terms of the Original Second Mortgage, and all of the Bank's decisions, on behalf of the Plans with regard to the Amended Second Mortgage Note are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 of the Act which may have arisen as a result of the Bank's decisions in this regard.

[10] It is represented that the purchase of the Amended Second Mortgage Note by the Bank at greater than fair market value does not constitute a excess contribution to the Plans in violation of section 415 of the Code. Instead, the Bank represents that it is proposing to purchase the Plans' interests in the Amended Second Mortgage Note in order to prevent an investment loss to the Plans and that the proceeds from the sale constitute additional investment earnings for the Plans.

bankruptcy litigation with Sovereign, and that the Plans will be protected from any losses which may result in the event of foreclosure on the Property;

(f) the Plans will incur no commissions, fees, or other costs in connection with the sale of their participation interests in the Amended Second Mortgage Note to the Bank; and

(g) the Plan Fiduciaries will monitor and enforce the rights of the Plans with respect to the second-step of the proposed transaction.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 523–8883. (This is not a toll-free number).

Old Kent Bank and Trust Company

Located in Grand Rapids, Michigan

[Application Nos. D–8878 and D–8879]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406 (b)(2) and (b)(3) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by the Bank from the Kent Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser for the Funds in connection with the investment by certain plans to which the Bank, or any of its affiliates, serves as a trustee with investment management responsibility (the Client Plans), as well as plans covering employees of the Bank or its affiliates (the Bank Plans) where the Bank or any affiliate is a trustee or directed trustee, provided that the following conditions are met:

(a) No sales commissions are paid by either the Client Plans or the Bank Plans (collectively, the Plans) in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Plans to the Funds;

(b) Each Client Plan, as well as each Bank Plan, receives a rebate, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Plan, of such Plan's proportionate share of all fees charged to the Funds by the Bank within no more than one business day of the receipt of such fees by the Bank;

(c) With respect to the Client Plans, a second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Funds (including a current prospectus for the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the investment of assets of the Client Plan in the Funds, the fees to be paid by the Funds to the Bank, and the purchase of additional shares of the Funds by the Client Plan with the fees rebated to the Client Plan by the Bank;

(d) The authorization referred to in paragraph (c) is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the Bank to engage in the transactions described in paragraph (c) on behalf of the Client Plan;

(e) With respect to the Bank Plans, no fees will be charged by the Bank or any of its affiliates to the Bank Plans for serving as either a trustee, directed trustee, or investment manager of the Bank Plans;

(f) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings with other shareholders of the Funds;

(g) The Bank maintains for a period of six years the records necessary to enable the persons described below in section (h) to determine whether the conditions of this proposed exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(h)(1) Except as provided in paragraph (2) of this section (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (g) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plans who has authority to acquire or dispose of shares of the Funds owned by the Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in section (h)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

Summary of Facts and Representations

1. The Bank is a Michigan state chartered banking association with its principal office located at One Vandenberg Center, Grand Rapids, Michigan. As of June 30, 1991, the total assets of the Bank and its affiliates were approximately $8.3 billion. The Bank has investment discretion for approximately 650 employee benefit plans, with total assets under management of approximately $1.8 billion. The Bank represents that its status as a fiduciary with investment discretion for either a Client Plan or a Bank Plan rises out of its relationship as a trustee or investment manager for such Plan, but does not result from the rendering of any investment advice to a third party that has investment discretion under the Plan.

The Client Plans include various pension, profit sharing, and stock bonus plans as well as voluntary employees' beneficiary associations, supplemental unemployment benefit plans, simplified employee benefit plans, retirement plans for self-employed individuals (i.e. Keogh Plans), and individual retirement accounts (IRAs). The Client Plans have assets ranging from approximately $25,000 to approximately $800 million. The Bank, in its capacity as a fiduciary of the Client Plans, may exercise investment discretion for all or a portion of the assets of the Client Plans.

The Bank Plans include the following: (1) Old Kent Thrift Plan (the Thrift Plan), which had assets of approximately $52,927,997 and approximately 2,691 participants as of June 30, 1991; and (2) Old Kent Retirement Income Plan, which had assets of approximately $98,132,177 and approximately 3,910 participants as of June 30, 1991.

2. The Bank proposes to invest assets of Client Plans over which it acts as a trustee and investment manager, as well as Bank Plans for which it acts as either

a trustee or directed trustee, in shares of the Funds in instances where the Bank is an investment adviser for the Funds.[11] The Plans' pro rata share of fees paid by the Funds to the Bank for investment advisory services will be rebated to all Client Plans and Bank Plans, subject to the conditions of the proposed exemption, for the assets of the Plans involved in such Fund investments (see Item 7 below).

With respect to the Client Plans, all investments in the Funds will be made by the Bank pursuant to an initial written authorization, and an annual reauthorization (as discussed in Item 8 below), of the investment by an independent Plan fiduciary (i.e. the Second Fiduciary). The Bank will invest assets of the Client Plans in any of the Funds for which it has received written authorization for such investment from the Second Fiduciary during the period that such authorization is effective.

With respect to the Bank Plans, investments in the Funds will be made by the Bank in its capacity as a trustee or directed trustee for the Bank Plans. In instances where investment decisions for a Bank Plan are made by individual Bank Plan participants, the Bank will invest such assets in the Funds pursuant to the instructions provided by the Bank Plan participant (see Item 9 below). The Bank will rebate to the Bank Plans all fees paid by the Funds to the Bank which result from investments made in the Funds by the Bank Plans.

3. The Funds are a Massachusetts business trust organized on May 9, 1986 as an open-end, diversified management investment company registered under the Investment Company Act of 1940. There are currently three Funds with combined assets of approximately $74 million, as of September 30, 1991. These Funds are essentially money market funds designed to invest in short-term government securities and other money market instruments. There are five additional Funds that are in the process of being established, two of which are designed to invest in equity securities with specified characteristics, two of which are taxable bond portfolios and one of which is a tax-exempt bond portfolio. The Bank contemplates that additional Funds may be established in the future and that all present and future Funds will be made available to the Plans.

Investments of Plan assets in the Funds will occur either through the direct purchase of shares of the Funds for a Plan by the Bank, the transfer by the Bank of Plan assets from one Fund to another Fund, or an automated sweep of uninvested cash of a Plan into the Funds by the Bank at the end of each business day. All such investments for the Client Plans will be made pursuant to the Second Fiduciary's written authorizations and annual reauthorizations to the Bank. In this regard, all Plan assets swept into the Funds would be invested in a Fund that is a money market fund designated by the Second Fiduciary.

4. Fiduciary Investment Company, Inc. (FICO), a Massachusetts corporation and a wholly-owned subsidiary of Keystone Custodial Funds, Inc. (Keystone), the Funds' manager, is the principal underwriter and distributor of the Funds' shares. Keystone and FICO are unrelated to the Bank and its affiliates. Fees have been authorized to be paid by each of the Funds to FICO for certain distribution expenses, pursuant to Rule 12b–1 under the Investment Company Act of 1940, in accordance with distribution agreements between FICO and each of the funds[12] Keystone Investor Resource Center, Inc., another subsidiary of Keystone which is unrelated to the Bank and its affiliates, serves as the transfer and dividend disbursing agent for the Funds. State Street Bank and Trust Company of Boston, which is also unrelated to the Bank, is the custodian of the Funds. Shares of the Funds are offered and sold to eligible investors, which include customers of the Bank, institutional investors, the general public, and trust accounts for which the Bank or an affiliate of the Bank, is a fiduciary or co-fiduciary. If the proposed exemption is granted, shares of the Funds will be offered to the Plans.

5. The Bank serves as an investment adviser to the Funds and charges the Funds for this service in accordance with investment advisory agreements (the Agreements) between the Bank and each Fund. The Agreements have been approved by the Board of Trustees of the Fund (the Fund Trustees), as required by applicable law. Any changes in the fees charged by the Bank for its services to the Funds will be approved by the Funds' Trustees. All of the Funds' Trustees are independent of the Bank and its affiliates. With respect to the proposed investment in the Funds by the Plans, the Bank states that it will rebate to each Plan such Plan's proportionate share of all investment advisory fees charged by the Bank to the Funds during the billing period for such fees (see Item 7 below). Thus, all investment advisory fees paid to the Bank by a Fund which result from any increases in the average daily net assets of the Fund by an investment of Plan assets will be rebated to the Plan. Such fee increases could occur either by a direct purchase by a Plan of shares of a Fund, the transfer of Plan assets from one Fund to another Fund, or a daily automated sweep of a Plan's uninvested cash into a Fund by the Bank.

6. The Bank currently invests certain assets of the Plans in commingled investment trusts (CITs) established by the Bank. The Bank believes that the interests of the Plans would be better served by the collective investment of assets of the Plans in the Funds rather than in the CITs. The Funds are valued on a daily basis, whereas the majority of the CITs, other than money market trusts, are valued only twice monthly. The daily valuation permits (i) the immediate investment of contributions of a Plan in various types of investments, (ii) greater flexibility in transferring assets from one type of investment to another, and (iii) the daily redemption of shares of the Funds for purposes of making distributions under a Plan. In addition, information concerning the investment performance of the Funds is available on a daily basis in newspapers of general circulation, which would allow sponsors of the Plans to monitor the performance of the Funds on a daily basis rather than semimonthly, monthly, quarterly, semiannually or, in some instances, annually through reports generated by the Bank.

7. The Bank represents that the proposed fee structure (the Fee Structure) has been designed to assure that the fees charged by the Bank, or any of its affiliates, to a Client Plan will be the same regardless of whether the assets of the Client Plan are invested in the Funds or the CITs. The Fee Structure is described as follow:

(a) The Bank and its affiliates will charge their standard fees to all the Client Plans for serving as a trustee and investment manager for the Client

[11] The applicant represents that transactions with the Funds by plans for which the Bank acts as a nondiscretionary trustee, other than the Bank Plans, are not covered by the proposed exemption. However, the applicant states that such plans may purchase or sell shares of the Funds pursuant to Prohibited transaction Exemption 84–24 (PTE 84–24, 49 FR 13208, April 3, 1984), if the conditions discussed therein are met (see Section III(f) and section IV of PTE 84–24). The Department expresses no opinion in this proposed exemption regarding whether such transactions would be covered by PTE 84–24.

[12] The prospectus for the Funds states that each Fund may pay FICO an annual fee of up to .25% of the average daily net assets of the Fund for distribution expenses. However, no such payments are currently made by any of the existing Funds. The Funds pay Keystone annual fees of .20% of the average daily net assets of each Fund for certain administrative expenses.

Plans.[13] The Bank provides such services to the Plans, including sweep services for uninvested cash balances in the Plans, under a single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. There are no separate charges for the provision of sweep services to the Plans.[14] The Bank states that in many cases, fees charged by the Bank to a Client Plan are paid by the Client Plan sponsor rather than by the Client Plan. The Bank also states that no such fees are or will be charged to the Bank Plans.

(b) The Bank will charge the Funds for its services to the Fund as investment adviser, in accordance with the Agreements between the Bank and the Funds. Under the Agreements, the Bank is entitled to a fee, payable monthly, computed at an annual rate of .40% of the average daily net assets for each of the existing Funds. However, the Bank states that the new funds may pay the Bank as much as .70% of the average daily net assets of such Funds. The fee differentials among the Funds will result from the particular level of services rendered by the Bank to the Funds.

(c) The investment advisory fees paid by each of the existing Funds are accrued on a daily basis and billed by the Bank to the Funds at the end of each month. The Bank may bill such fees to some of the new Funds at the end of each quarter.

(d) At the end of each month or quarter (pursuant to the terms of the applicable Agreements), and essentially simultaneously with the billing described in (c) above but in no event more than one business day of the receipt of such fees by the Bank, the Bank will rebate to each Client Plan and Bank Plan such Plan's pro rata share of all investment advisory fees charged by the Bank to the Funds (the Rebate Program). The Bank represents that the rebated fees will be paid to the Plan in cash, except that the rebate may be effectuated through the purchase of additional shares of the Funds pursuant to an annual election made by the Plan. The purchase of the shares would occur in lieu of the cash rebate on the same day that such rebate would have been paid to the Plan. All decisions regarding the use of rebated fees to purchase additional shares of the Funds will be made by a Second Fiduciary for a Plan and by the Bank for a Bank Plan (see Item 8 below).

The Bank states that the Fee Structure will be at least as advantageous to the Client Plans as an offset or credit arrangement whereby investment advisory fees paid by the Funds to the Bank would be offset against fees charged directly by the Bank to the Client Plans.[5] The Rebate Program will ensure that the Bank will not receive any additional fees from the Funds as a result of the investment in the Funds by the Client Plans. Thus, the Fee Structure with the Rebate Program essentially will have the same effect in offsetting the Bank's investment advisory fees received from the Funds as an arrangement allowing for a credit of such fees against investment management fees charged directly to the Client Plans. The Bank prefers the Fee Structure with the Rebate Program because it allows the Bank to maintain a fixed fiduciary fee schedule for services to the Client Plans, which is more administratively feasible and less costly than a system which credits such fiduciary fees with the investment advisory fees paid by the Funds to the Bank. The Bank notes that the Fee Structure will also allow the Client Plan sponsor to pay the Client Plan's fees to the Bank or its affiliates for serving as a trustee and investment manager for the Client Plan, and still allow for the Client Plan to receive a rebate of such Plan's pro rata share of fees paid by the Funds to the Bank.

The Bank is responsible for establishing and maintaining a system of internal accounting controls for the Rebate Program. In addition, the Bank will retain the services of Arthur Anderson & Co. of Chicago, Illinois (the Auditor), an independent accounting firm, to audit annually the rebating of fees to the Plans under the Rebate Program. The Bank states that such audits will provide independent verification to the proper rebating to the Plans of fees charged by the Bank to the Funds. The Bank states further that information obtained from the audits will be used in the preparation of required financial disclosure reports to the Plans' fiduciaries.

By letter dated March 4, 1992, the Auditor describes the procedures that will be used in the annual audit of the Rebate Program. The Auditor will obtain certain information from KPMG Peat Marwick, the independent auditor and accountant for the Funds, including the following: (i) A calculation of the daily actual balances for all the Funds and for the total Plan shareholders of such Funds; (ii) a detailed list of the expenses charged to the Funds' shareholders by type of expense; and (iii) calculations of the total expenses charged by the Bank to each Fund which are reimbursable to the Plans. On the basis of such information, the Auditor will: (i) review and test compliance with the Rebate Program's operational controls and procedures established by the Bank; (ii) verify the daily rebate factors transmitted to the Bank from the Funds, including the proper assignment of identification numbers to all Plan shareholders; and (iii) verify the rebates paid in total to the sum of all rebates paid to each Plan. The Auditor will recompute, in total, the number of Fund shares issued to each Plan and/or cash received in connection with the rebate of each Plan's expenses to ensure that the proper number of shares or amount of cash was issued to the Plan. Finally, the Auditor will recompute on a test basis the amount of rebates received by selected Plan shareholders of the Funds to verify that such rebates were credited to the proper Plan accounts. In this regard, the Auditor will obtain a listing of the rebates paid to each such Plan regarding the Plan's shares in each of the Funds to determine that the total rebate paid to the Plan by the Bank equals the total amount that was required to be rebated.

In the event either the internal audit by the Bank or the independent audit by the Auditor identifies that an error has been made in the rebating of fees to the Plans, the Bank will correct the error. With respect to any shortfall in rebated fees to a Plan involving cash rebates, the Bank will make a cash payment to the Plan equal to the amount of the error

[13] The Department is not proposing any exemptive relief herein for fees paid by the Client Plans directly to the Bank or any affiliate for the provision of services. In this regard, see section 408(b)(2) of the Act and § 2550.408b–2 of the regulations.

[14] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks, and the potential applicability of certain statutory exemptions as described therein.

[5] See Prohibited Transaction Exemption 77–4 (42 FR 18732, April 8, 1977). PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of this investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

with interest paid at money market rates offered by the Bank for the period involved. With respect to a shortfall in rebated fees involving a Plan where the Bank's or the Second Fiduciary's prior election was to have rebated fees invested in shares of a particular Fund, the Bank will make a cash payment to the Plan equal to the amount of the error plus interest based on the rate of return for the shares of the Fund which would have been acquired during the period involved. In the latter instance, such cash amounts will then be reinvested in shares of the particular Fund designated by the Second Fiduciary or, in the case of the Bank Plans, the Bank. Any excess rebates made to a Plan will be corrected, to the extent possible, by an appropriate reallocation of cash or Fund shares to the Plan during the next payment period to accurately reflect the proper amount of total rebates due to the Plan for the period involved.

8. With respect to the Client Plans, the Bank represents that a Second Fiduciary, which will be independent of and unrelated to the Bank and its affiliates, will receive full written disclosure of information concerning the Funds and, on the basis of such information, will authorize in writing the investment of assets of a Client Plan in the Funds, the fees to be paid by the Funds to the Bank, and the purchase of additional shares of the Funds by the Client Plan with the fees rebated to the Client Plan by the Bank. The authorization will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization with instructions on the use of the form will be supplied to the Second Fiduciary no less than annually. The instructions for such form will include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the Bank to engage in the subject transactions on behalf of the Client Plan.

The Bank states that the Second Fiduciary will receive a current prospectus for the Funds and a written statement giving full disclosure of the Fee Structure. The disclosure statement will explain why the Bank believes the investment of assets of the Client Plan in the Funds is appropriate. In addition, the disclosure statement will describe whether there are any limitations on the Bank or its affiliates with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[16]

9. With respect to the Bank Plans, the Bank represents that it will not be required to obtain approval from a Second Fiduciary prior to the investment of assets of a Bank Plan in the Funds. However, the Bank states that participants in the Thrift Plan, or any other individual account plan sponsored by the Bank and its affiliates which subsequently allows the participants to direct the investment of assets in their individual accounts, will receive the same information that will be provided to a Second Fiduciary of a Client Plan, including a current prospectus relating to the Funds and a statement describing the Fee Structure. The assets subject to the control of a Bank Plan participant will not be invested in the Funds or in an investment fund holding shares of the Funds which is an investment option under the Bank Plan, except in accordance with an affirmative direction of the Bank Plan participant. The Bank states that with respect to the Thrift Plan, the investment funds established under the Plan will be the record holder of shares of the Fund rather than the individual accounts of participants. Therefore, fees rebated to the Thrift Plan will be rebated to the investment funds. All fees will be rebated in cash to such funds, unless the committee responsible for the administration of the Thrift Plan approves, not less frequently than annually, the reinvestment of fees in shares of the Funds. The Bank represents that all fees rebated to the Thrift Plan will be properly allocated to the investment funds and that all amounts resulting from such rebated fees will be appropriately credited to each participant's individual account.

10. No sales commissions will be paid by the Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees will be paid in connection with the sale of shares by the Plans to the Funds. However, the Funds may pay a distribution fee to FICO or any other distributor of the Funds, provided that such distributor is unrelated to the Bank and the Plans. The Bank states that all other dealings between the Plans and the Funds, the Bank, or any affiliated person, will be on a basis no less favorable to the Plans than such dealings are with the other shareholders of the Funds.

11. In summary, the Bank represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Funds will provide the Plans with a more effective investment vehicle than the CITs currently maintained by the Bank, without any increase in fees paid to the Bank or its affiliates; (b) the Bank will require annual audits by an independent accounting firm to verify the proper rebating to the Plans of fees charged by the Bank to the Fund; (c) with respect to Client Plans, investments in the Funds and the payment of any fees by the Funds to the Bank will require an authorization in writing by a Second Fiduciary to permit such investments after full written disclosure in all cases to the Second Fiduciary, including a current prospectus for the Funds and a statement describing the Fee Structure; (e) any authorization made by a Client Plan will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary on a form expressly providing an election to terminate the authorization, which will be supplied to the Second Fiduciary no less than annually; (f) with respect to the Bank Plans, no fees will be charged by the Bank, or any of its affiliates, to the Bank Plans for serving as either a trustee, directed trustee, or investment manager of the Bank Plans and each Bank Plan's pro rata share of all fees paid by the Funds to the Bank will be rebated to the Bank Plans; (g) with respect to a Bank Plan which allows for a participant to direct the investment of his or her individual account's assets in the Bank Plan, the Bank Plan participant will direct the investment of the participant's assets into the Funds, or into an investment fund holding shares of the Funds which is an investment option under the Bank Plan, and will approve such investment based on full written disclosure, including a current prospectus for the Funds and a statement describing the Fee Structure; (h) no sales commissions or redemptions fees will be paid by the Plans in connection with the acquisition or sale of shares of the Funds; and (i) all dealings between the Plans and the Funds, the Bank, or any affiliated person, will be on a basis no less favorable to the Plans than such

[16] See section II(d) of PTE 77-4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

dealings are with the other shareholders of the Funds.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Bill Rodgers, Inc. Pension Plan (the Plan)

Located in Boston, Massachusetts

[Application No. D–8911]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed purchase (the Purchase) of certain real property (the Property) by the Plan from William H. Rodgers, a disqualified person with respect to the Plan, provided that (1) the Plan pays no more then the fair market value for the Property as determined by a qualified, independent appraiser on the date of the Purchase; and (2) the Property is not leased to or used by any disqualified person with respect to the Plan.[17]

Summary of Facts and Representations

1. The Plan is a defined benefit plan with two participants: William H. Rodgers and his wife, Gail S. Rodgers (the Rodgers). As of September 30, 1991, the total assets in the Plan were $984,043.06. The trustees of the Plan, who have investment discretion over the assets of the Plan, are William H. Rogers; his brother, Charles A. Rodgers of Epswich, Massachusetts, who is the manager of and one-half owner, with William H. Rodgers, of C. C. Associates, Inc., Boston, Massachusetts; and his public accountant, Russell H. McCarter, C.P.A. of Boston Massachusetts (the Trustees).

2. The Employer that sponsors the Plan is a Massachusetts corporation with one employee, Mr. William H. Rogers. His wife, Gail S. Rodgers, is a former employee of the Employer. Mr. William H. Rodgers, as sole employee of the Employer and former professional marathon runner, involves the Employer in various activities associated with sport running. The activities of Mr. Rodgers include promotional work for running-shoe companies, appearances at running events, consulting organizers of road races, lecturing running clubs on fitness training, and supervising running clinics.

3. The Property is a two-bedroom, two-bath residence on a fenced lot with a two-car garage located at 1822 East Desert Park Lane, Phoenix, Arizona. The location of the Property is on a cul-de-sac within a 224-unit planned residential resort community known as The Pointe. Adjacent to the The Pointe is a 3,000-acre Phoenix Mountain preserve that offers trails for running and cycling. In addition, nearby the Property there are amenities provided by The Pointe that include, among other things, dining and entertainment accommodations, golfing, swimming, tennis, racquetball, riding stables, and physical fitness equipment.

During recent years a number of capital improvements and repairs were made to the Property: 1987, portions of the roof repaired and warranted for 10 years; 1989, new laundry equipment installed; and 1991 and 1992, garage door opener installed, interior repainted, landscaping, replacement of counter tops, sinks, faucets, and floor covering in both bathrooms, new faucets for the kitchen sink, drapes and rugs cleaned, and light fixture installed in dining room.

As of January 15, 1991, the Property was appraised by an independent appraiser, John T. Callan, A.S.A., Certified General Appraiser with Callan & Waldrep of Phoenix, Arizona, who determined the fair market value to be $104,000. This appraisal by Mr. Callan was updated as of January 31, 1992, and he found that the fair market value of the Property had increased by $2,000 to $4,000 since his previous appraisal of January 15, 1991.

Rebecca D. Ponte of Realty Executives in Phoenix, Arizona, a licensed real estate salesperson and certified real estate appraiser, represented in two letters, dated March 1, 1991, and March 3, 1992, respectively, that most properties in The Ponte lease quickly and remain leased year-round. Miss Pointe also represented that the Property is desirable rental property, and she predicted that if the current lease is not renewed the Property should lease quickly for a rental of between $800 to $850 per month.

4. William H. Rodgers has offered to sell the Property to the Plan for no more than the fair market value of the Property as determined on the date of Purchase by a qualified, independent appraiser. Although the Property is subject to a note and mortgage of approximately $48,000 which is held by the Resolution Trust Company, the applicants represent that the Property will be conveyed to the Plan free and clear of all encumbrances at no expense of any kind to the Plan. The outstanding balance on the note and mortgage at the time of the Purchase will be paid by William H. Rodgers from the proceeds of the Purchase without penalty as permitted under the terms of the note mortgage.

Currently the Property is leased through September 1992 to an unrelated person whose credit history was obtained and examined by the Trustees. The Plan intends to continue leasing the Property to unrelated persons with respect to the Plan and in no event will the Rodgers or any other disqualified person have use of or receive any benefit from the Property.

The Trustees propose to continue to diversify the portfolio of the Plan by investing a portion of the Plan's assets in real property. Currently the Plan has 44 percent of its portfolio in mutual funds holding U.S. Government Securities, 36 percent in interest-bearing cash accounts, 11 percent in certificates of deposit, 8 percent in precious metals, and none invested in real property. When renting the Property for $825 per month, the applicants represent that the yield to the Plan will be a 7.4 percent return on an investment of $104,000 if there is an annual expense incurred of $2,200 for maintenance and taxes. During 1990 the Property incurred an annual tax expense of $979.98.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 4975(e)(2) of the Code because (a) the purchase price of the Property will be approximately 11 percent of the total assets of the Plan; (b) the Plan will pay no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Purchase; and (c) the Rodgers are the only participants of the Plan to be affected by the proposed transaction and desire that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Since William H. Rodgers is the sole shareholder of the Employer and he and his wife are the sole participants of the Plan, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department,

[17] Since William H. Rodgers is the sole shareholder of Bill Rodgers, Inc. (the Employer), and he with his wife, Gail S. Rodgers, are the only participants in the Plan, there is no jurisdiction under title I of the Act, pursuant to 29 CFR 2510.3–3. However, there is jurisdiction under title II of the Act pursuant to section 4975 of the Code.

telephone (202) 523–8881. (This is not a toll-free number.)

Mobay Corporation Salaried Employees Savings Plan, (the Mobay Plan), Afga Corporation Employee Savings Plan (the Afga Plan), and Miles Savings Plan (the Miles Plan; collectively, the Plans)

Located in Pittsburgh, Pennsylvania
[Application Nos. D–8939, D–8940, D–8941]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) a restorative payment to the Plans (the Restorative Payment) by Miles Inc., the sponsor of the Plans, with respect to the Plans' interest in a guaranteed investment contract (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plans' potential repayment of the Restorative Payment (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party, (b) the Restorative Payment is made only with respect to amounts owed under the terms of the GIC, (c) the Repayments shall not exceed the Restorative Payment, (d) the Plans will not pay any interest or expenses with respect to the Restorative Payment, and (e) the Repayments are restricted to, and shall in no event exceed, the amounts actually received by the Plans from Executive Life and other responsible third parties with respect to the GIC.

Summary of Facts and Representations

1. The Plans are defined contribution plans originally sponsored by Mobay Corporation, Afga Corporation and Miles, Inc. Effective December 31, 1991, Mobay Corporation and Afga Corporation were merged with and into Miles, Inc. (Miles), which is the surviving corporation and sponsor of the Plans. The Plans were not merged and continue to maintain separate trusts. Miles is a privately-held Indiana corporation with its corporate offices in Pittsburgh, Pennsylvania. As of March 31, 1991, the Mobay Plan had approximately 5,800 participants and assets of approximately $207,900,000, the Afga Plan had approximately 4,200 participants and assets of approximately $81,600,000, and the Miles Plan had approximately 8,400 participants and assets of approximately $231,300,000. The trustee of each Plan is Mellon Bank in Pittsburgh, Pennsylvania (the Trustee).

2. Each Plan provides for individual participant accounts (the Accounts) and for participant direction and redirection from time to time of the investment of the Accounts among various investment funds (the Funds). The Funds of each Plan include a guaranteed investment contract fund (the G Funds) comprised of interests in various guaranteed investment contracts issued by insurance companies. The G Funds are under the management of State Street Bank and Trust Company of Boston, Massachusetts (State Street). The assets in the G Funds include each Plan's share of an undivided interest in the GIC, which is contract number CG0127103A, issued by Executive Life to State Street on January 4, 1988.

The Plans share their interest in the GIC with other unknown parties as participants in State Street's Selection Fund 88–V. The GIC has a five-year term, a guaranteed interest rate of 9.55 percent (the Contract Rate), maturity on December 31, 1992, and a principal deposit limit of $29,800,000. The Plans' G Funds are authorized to make withdrawals from their interest in the GIC to enable distributions to participants upon employment termination, in-service withdrawals, and participant loans, with respect to Accounts invested in the G Funds, and to enable Account transfers out of the G Funds into other Funds of the Plans. The Plans' aggregate interest in the GIC (the Interest) is limited to a principal investment not to exceed $26,280,000. Principal deposits have not been made under the GIC by any of the G Funds since March 31, 1991. The Interest had an accumulated book value of $25,661,494.33 as of April 11, 1991, representing total principal deposits in the GIC by the Plans, plus accrued interest at the Contract Rate, less previous withdrawals.

3. On April 11, 1991, Executive Life was placed into conservatorship by the insurance commissioner of the State of California (the Commissioner) [18] Miles represents that as a result of related legal action by the Commissioner, no withdrawals are permitted with respect to any Executive Life guaranteed investment contracts, including the GIC, except for hardship distributions. Consequently, since the conservatorship commenced, the Plans have been unable to make full benefit distributions, or to effectuate fully the directions of participants, with respect to Accounts invested in the G Funds. Since April 11, 1991, Account investments in the G Funds attributable to the Interest have been frozen, and no withdrawals, distributions or transfers have been permitted with respect to the frozen amounts. Miles wishes to protect the affected Plan participants from the risks and uncertainties of continued investment in the GIC and to enable the resumption of benefit distributions and participant-directed transfers from the G Funds. Toward this objective, Miles proposes the Restorative Payment and its potential repayment by the Plans, and is requesting an exemption for such transactions under the terms and conditions described herein.

4. All terms of the Restorative Payment and the Repayments will be embodied in a written agreement (the Agreement) between Miles and the Trustee. Under the Agreement, Miles is obligated to make the Restorative Payment to the Plans in the amount of (1) the Plans' proportionate share of the accumulated book value of the GIC as of April 11, 1991, based on the percentage share of the Plans' participation in the GIC as of that date, plus (2) interest, if any, at the rate actually accrued thereon after April 11, 1991 under the Commissioner's rehabilitation of Executive Life (the Rehab Rate) through the date of the Restorative Payment. Accordingly, if at the time of the Restorative Payment, a successor to Executive Life has agreed to pay interest on the GIC after April 11, 1991, Miles will add to the Restorative Payment such interest. The Agreement requires the Restorative Payment to be made as soon as practicable after the earliest date on which Miles has obtained the exemption proposed herein and has entered into a favorable closing agreement with the Internal Revenue Service.[19] The Agreement requires that the proceeds of the Restorative Payment will be used solely to permit affected participants, in accordance with the terms of the Plans, to take a distribution of, or to transfer their investment in, the portions of their Accounts in the G

[18] The Department notes that the decisions to acquire and hold the interest in the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the interest in the GIC.

[19] See Revenue Procedure 92–16, 26 CFR 601.202: Closing agreements.

Funds as of April 11, 1991 which is attributable to the Plans' interest in the GIC. Miles is specifically prohibited under the Agreement from charging any interest and receiving any fees, commissions or other charges in connection with the Restorative Payment.

In exchange for the Restorative Payment, the Trustee agrees to make the Repayments to Miles by forwarding to Miles payments received with respect to the Plan's interest in the GIC (the GIC Payments) from Executive Life, its successors and assigns, State Street, any conservator, trustee or other person performing similar functions with respect to Executive Life, or any state guaranty fund or other entity acting as surety or insurer with respect to Executive Life (collectively, the GIC Payors). The Repayments are to be made only from the GIC Payments by the GIC Payors, and from no other source. The Trustee is obligated to make the Repayments only until the Restorative Payment has been repaid to Miles, without any interest thereon. Thereafter, any further GIC Payments are to be retained by the Plans. Specifically, should the Restorative Payment be less than the amount eventually received from the GIC Payors upon final disposition of the GIC, the Plans shall be entitled to retain such additional amount.

5. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Plans will be enabled fully to resume transfers and benefit payments from the G Funds; (2) The transactions will offer complete protection of the Plans' principal investments in the GIC and interest at the Contract Rate accrued through April 11, 1991; (3) In the Restorative Payment the Plans will recover interest after April 11, 1991, if any, at the Rehab Rate; (4) The Repayments will be restricted to the GIC Payments received by the Plans from the GIC Payors; and (5) The Repayments will not exceed the Restorative Payment or the total amount of GIC Payments received by the Plans.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Fortunoff Pension Plan—Employer Group A (the Group A Plan), Fortunoff Pension Plan—Employer Group B (the Group B Plan) and Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the Profit Sharing Plan; collectively, the Plans)

Located in Westbury, NY

[Application Nos. D-8778, D-9073 and D-9074]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed: (1) Purchase by the Plans of undivided interests in certain improved real property (the Property), for the total cash consideration of $6 million, from M. Fortunoff of Westbury Corporation (M. Fortunoff), the sponsor of the Group B Plan; (2) the leasing of the Property by the Plans to Fortunoff Fine Jewelry and Silverware, Inc. (FFJ), the sponsor of the Group A Plan and the Profit Sharing Plan under the provisions of an amended lease (the Amended Lease); and (3) the use of space in the Property by Fortunoff Information Services (FIS) pursuant to the terms of a license agreement (the License) between FFJ and FIS, provided the following conditions are met: (1) The terms of the transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party; (2) the independent fiduciary who has initially determined that the subject transactions are in the best interests of the Plans, monitors and enforces the terms of such transactions on behalf of the Plans; (3) the acquisition price that is paid by the Plans for proportionate interests in the Property is less than the independently appraised value of the Property; (4) the value of the proportionate interests in the Property that are acquired by each Plan does not exceed 25 percent of the Plan's assets; (5) with the exception of mandatory title insurance charges, no Plan pays any real estate fees or commissions in connection with its acquisition of an interest in the Property; (6) the rental amount (the Base Rent) under the existing lease (the Lease), which will be incorporated into the Amended Lease, is (as of March 17, 1992) in excess of the fair market rental value of the Property; (7) the Base Rent is adjusted annually (the Escalation Amount) by the independent fiduciary based upon an independent appraisal of the Property; (8) FFJ incurs all real estate taxes and other costs that are associated with the Property and which are incident to the Amended Lease; (9) the fee paid by FIS to FFJ under the License is proportionate to the rental payment made by FFJ to the Plans under the Amended Lease; and (1) the License has no effect on the Plans' ownership rights in the Property or FFJ's obligations to the Plans under the Amended Lease.

Summary of Facts and Representations

1. The Plans, which are not parties in interest with respect to each other within the meaning of section 3(14) of the Act, consist of the Group A Plan, the Group B Plan and the Profit Sharing Plan. The Plans were established by FFJ and M. Fortunoff in 1976 for the benefit of their eligible employees as well as those of their affiliates. The Group A Plan is a defined benefit plan that was established by FFJ. The trustees of the Group A Plan and the decisionmakers with respect to that Plan's assets are Alan Fortunoff, his wife, Helene Fortunoff, their son, Louis Fortunoff and Norman Goldberg, who is the executive vice president of FFJ. As of January 1, 1991, there were 1,420 participants in the Group A Plan. As of September 30, 1991, the Group A Plan had total assets having a fair market value of $12,433,265.

2. The Group B Plan is a defined benefit plan that was established by M. Fortunoff. As of January 1, 1991, the Group B Plan had 1,548 participants. As of September 30, 1991, the Group B Plan had total assets having a fair market value of $10,676,409. The trustees of the Group B Plan are Isidore Mayrock, Rachel Mayrock Sands and Martin Merkur. With the exception of securities investments, these individuals are responsible for investment decisions affecting the Group B Plan.

3. The Profit Sharing Plan is a defined contribution plan that was also established by FFJ. As of January 31, 1991, the Profit Sharing Plan had 1,323 participants many of whom are in common with the Group A Plan. As of October 31, 1991, the Profit Sharing Plan had total assets having a fair market value of $9,161,490. The trustees of the Profit Sharing Plan and the decisionmakers with respect to such plan's investments are Alan Fortunoff, Helene Fortunoff, Louis Fortunoff, Esther Fortunoff and Norman Goldberg.

4. FFJ, the sponsor of the Group A Plan and the Profit Sharing Plan, is engaged in the retail business of selling fine jewelry, high quality silverware, china, glass and crystal items. FFJ is wholly owned by Alan and Helene Fortunoff and it is located in Westbury, New York.

5. M. Fortunoff, the sponsor of the Group B Plan, is engaged in the business

of selling rugs, furniture, lamps, linens, draperies, hardware, kitchenware and other similar household items. The equity holders of M. Fortunoff are the Estate of Marjorie Mayrock (the Estate) [20] and three trusts of which Mr. and Mrs. Fortunoff serve as trustees for the benefit of Marjorie Mayrock's children, Isidore Mayrock, Elliot Mayrock and Rachel Mayrock Sands. The Estate owns 79.87 percent of M. Fortunoff and the three trusts have an aggregate equity interest of 20.13 percent. M. Fortunoff is located in Westbury, New York.

6. FIS is a partnership comprised of FFJ, Inc. and M. Fortunoff. FIS provides computer, data processing and other "back office" services [21] to the retail store operations of both FFJ, Inc. and M. Fortunoff. FIS is located in Westbury, New York.

7. At present, M. Fortunoff holds title to certain real property that is located at One MH Plaza, Axinn Avenue, Garden City East, Nassau County, New York. The Property is improved by a one story office and warehouse building that contains approximately 116,000 square feet of gross building area on a site of approximately 4.25 acres. The Property was acquired by M. Fortunoff in May 1977 from Ciara Investors, an unrelated party. The Property is not currently encumbered by a mortgage. Since March 1989, FFJ has leased the Property from M. Fortunoff for its warehouse and "back office" operations under the provisions of a written, triple net lease. The Lease commenced on March 1, 1989 and expires on December 31, 2013. The annual rental under the Lease is $554,232 and it is payable in monthly installments of $46,186.

In addition to leasing space from M. Fortunoff, FFJ has granted its affiliate, FIS, a right to use, for $3,850 per month, approximately 8,042 square feet of the building area for its information systems and data processing operations. The License agreement between FFJ and FIS commenced on March 1, 1989 and it has a term that coincides with that of the Lease.

8. To enable the Plans to increase their investment yields and diversify their assets by holding income-producing property located in a prime commercial area, the applicants propose that the Plans enter into a Real Estate Purchase Agreement with M. Fortunoff whereby the Plans will acquire undivided interests in the Property as tenants in common. Accordingly, the applicants request an administrative exemption from the Department.

9. The Property will be allocated among the Plans such that the Group A Plan and the Group B Plan will each acquire a 40 percent interest in the Property with each Plan paying $2.4 million. The remaining undivided interest in the Property will be acquired by the Profit Sharing Plan for $1.2 million. The undivided interests will represent approximately 19 percent of the Group A Plan's assets, 22 of the Group B Plan's assets and 13 percent of the assets of the Profit Sharing Plan. The purchases will be made for cash. At the closing of the Real Estate Purchase Agreement, M. Fortunoff will deliver to the Plans, a bargain and sale deed containing covenants against M. Fortunoff's having placed restrictions or encumbrances against the Property. In addition, the Real Estate Purchase Agreement will require that the parties allocate the rental income as of the closing date. Except for the usual title examination, title insurance and recording fees, M. Fortunoff will pay all transfer taxes as well as all costs that are associated with the sale.

10. For purposes of the proposed acquisition, the Property has been appraised by James G. Peel, MAI, CRE, an independent appraiser and president of James G. Peel Associates, Inc. of New York, New York. As of November 5, 1990, Mr. Peel determined that the Property had a fair market value of $6.5 million of which $4.5 million was allocated to the land. In an updated appraisal report of December 19, 1991, Mr. Peel noted that there had been no change in the fair market value of the Property.

11. Following the acquisition of the Property by the Plans, the applicants propose that the Lease and License arrangements continue to remain in effect but with some modifications. Specifically, the applicants propose that the Lease and License agreements be assigned to the Plans in accordance with the provisions of a Lease Assignment and Assumption Agreement. Therefore, the applicants also request administrative exemptive relief from the Department with respect to these transactions.

As modified by the Lease Assignment and Assumption Agreement, the Amended Lease between the Plans and FFJ, will have a twelve year term that will expire on February 29, 2004. The annual rental under the Amended Lease will remain at $554, 232 (the Base Rent) and it will still be payable in monthly installments of $46,186.[22] However, commencing on March 1, 1993, and including the year ending February 29, 2004, FFJ will pay, in addition to the Base Rent, an annual Escalation Amount determined for each year of the Amended Lease based upon the fair market rental value of the Property as determined by Mr. Peel or such other independent appraiser selected by Mr. Sanford Browde, the independent fiduciary with respect to the proposed transactions. FFJ will pay the Escalation Amount on a monthly basis in equal installments. In the event that the fair market rental value of the Property should decline to an amount which is less than the Base Rent, the Amended Lease provides that the Plans will be paid the Base Rent.[23]

The Amended Lease will also be a triple net lease. As such, it will require that FFJ pay all real estate taxes that are assessed against the Property as well as all costs that are related to the use or operation of the Property such as amounts expended for utilities, heating, ventilation, air conditioning, casualty and liability insurance premiums, and maintenance and repair.

12. As also modified by the Lease Assignment and Assumption Agreement, the License between FFJ and FIS will require that FIS pay its proportionate share of utilities as well as repair and maintain that portion of space that it occupies on a triple net basis. The License will have a term that is commensurate with that of the Amended Lease and it will require that FIS pay FFJ a base fee that is identical to the amount that FFJ will pay the Plans under the Amended Lease. However, this fee will be proportionate to the amount the space that FIS actually occupies. In this regard, the License fee will be equal to the sum of the Base Rent and the annual Escalation Amount

[20] Marjorie Mayrock is the deceased sister of Alan Fortunoff.

[21] According to the applicants, "back office services" refer to non-executive office operations such as data processing, bookkeeping and other records maintenance, and other administrative services that is not ordinarily associated with work performed by senior officers or executive personnel.

[22] In a letter dated September 21, 1991 and as clarified in another letter dated March 17, 1992, Mr. Peel states that the subject rental amount is in excess of the fair market rental value of comparable properties located in Nassau County, New York. Mr. Peel notes that the base rental of $554,232 equates to $4.78 per square foot of total building area.

[23] The applicants represent that because the Lease provides for rent to the Plans that is in excess of the fair market rental value of the Property, the 20 percent share of the rental paid to the Profit Sharing Plan is subject to the contribution limitations set forth in section 415 of the Code. In this regard, the applicants represent and agree that to the extent that the 20 percent portion of rent that FFJ pays to the Profit Sharing Plan exceeds the fair market rental value for the Property, such excess will be treated as an employer contribution to such plan, and that the excess, when added to the balance of the annual additions to the Profit Sharing Plan, will not exceed the limitations prescribed by section 415 of the Code.

payable by FFJ under the Lease during any Lease Year, divided by 8,042 square feet of space (which represents 7 percent of the total area comprising the Property). Such fee will be payable in twelve equal monthly installments on the first day of each month during its term. In the event that the fair market rental value of the Property should decline to an amount which is less than the Base Rent, the License agreement provides that FFJ will receive a License fee that is proportionate to the Base Rent to be received by the Plan.

13. As stated above, Mr. Browde will serve on behalf of the Plans as the independent fiduciary. Mr. Browde represents that he is a practicing attorney specializing in Labor and Employment Law. He states that he has no affiliation or business relationships with the parties involved in the proposed transactions. He also asserts that he is generally familiar with commercial real properties in the vicinity of the Property and that he has knowledge of real estate values for income-producing real property and fair rental values for commercial real property.

As for fiduciary experience under the Act, Mr. Browde explains that he has served as counsel for various union welfare and pension plans where he has been involved in the administration of plan assets. He further represents that he has consulted with counsel familiar with the Act regarding his duties and responsibilities as the independent fiduciary. In this connection, he states that he understands his responsibility to act at all times in a manner that is in the best interests of the Plans and their participants and beneficiaries.

Mr. Browde represents that the proposed transactions are in the best interests of the Plans and their participants and beneficiaries. Mr. Browde believes the Plans' proposed acquisition of the Property will allow the Plans to increase their investment yield, achieve capital appreciation and diversify their assets. In addition, Mr. Browde notes that the terms of the acquisition are fair to the Plans in all material respects. He suggests that no closing costs will be involved except for customary title insurance charges that are mandated under New York State Insurance Law. Further, Mr. Browde explains that the Real Estate Purchase Agreement provides that any title defects, violations or similar impediments to title will be remedied by M. Fortunoff, at its own expense, prior to the transfer of the Property to the Plans.

In affirming the Amended Lease, Mr. Browde notes that FFJ is a desirable, secure and creditworthy lessee and that the rental that it will pay to the Plans is substantially above the market rental for similar properties. Mr. Browde also notes that the Amended Lease imposes an economic burden on FFJ to repair and maintain the premises. In addition, he explains that his duties as the independent fiduciary will give him the ability to demand an increase in rent to the fair rental value of the Property.

With respect to the License between FFJ and FIS, Mr. Browde states that it will have no bearing on the timing or amount of FFJ's rental payments or obligations to the Plans under the Amended Lease. For this reason, he believes that characterizing the arrangement as a "license" or as a "sublease" has no legal significance because in either case, there is no privity of contract with the lessor and, as such, there is no effect on the lessor's ownership of the property.

Mr. Browde also represents that he has examined the overall investment portfolios for the Plans and he has given consideration to their respective liquidity requirements. Based upon his analysis, he asserts that the proposed transactions will allow the Plans to acquire income-producing real property and thereby diversify their assets. In addition, he notes that the Plans will have an opportunity to achieve capital appreciation on a major asset in their investment portfolios by purchasing interests in the Property for an aggregate price that is less than fair market value. Therefore, he believes the Plans' acquisition of the Property is in furtherance of their objectives to obtain investment diversification. Because a substantial portion of the Plans' assets will continue to be in the nature of corporate debt instruments, treasury bills and readily marketable securities, Mr. Browde states that the Plans' acquisition of the Property will not interfere with their liquidity requirements.

In addition to the above, Mr. Browde represents that he has conducted a detailed investigation of the creditworthiness of FFJ, and more specifically, FFJ's ability to satisfy its payment obligations under the Amended Lease. Mr. Browde explains that he has reviewed FFJ's financial statements as of January 28, 1990 and February 3, 1991 and a Dun and Bradstreet report dated January 21, 1992. He also states that he has interviewed Mr. Leonard Tabs, Senior Vice President of Finance and Chief Financial Officer of FFJ.

As a result of this investigation, Mr. Browde notes that the (a) net worth of FFJ is currently in excess of $10 million; (b) physical inventory of merchandise and assets is conducted semiannually every July and January; and (c) the Dun and Bradstreet report concludes that FFJ has a "clear" payment history. In addition, he states that Mr. Tabs has certified to him that all of the obligations of FFJ are current and that there have been no material or adverse changes in FFJ's financial condition or operations.

With respect to the financial condition of FFJ, Mr. Browde states that FFJ currently has an outstanding mortgage obligation in the amount of $10 million which is owed to a bank, matures in June 1996 and carries interest at the rate of 10⅝ percent per annum. The mortgage is collateralized by land and a building located in New York, New York and it is valued on FFJ's financial statements at $5 million representing its cost. He says he has been advised by Mr. Tabs that the real property securing the loan has a fair market value in excess of $20 million and that there is approximately $15 million in additional equity that is not reflected on the balance sheets. Upon maturity of this mortgage, Mr. Browde explains that it will be refinanced by FFJ and thus, it will not impair FFJ's ability to meet its other obligations, including funding the payments due the Plans under the Amended Lease.

Mr. Browde also represents that he has been advised by Mr. Tabs that FFJ is a guarantor, along with M. Fortunoff and their principals, of obligations of related entities which aggregate $111 million. He indicates that these guarantees were entered into as part of financing the purchase of 69 acres of real property located in Westbury, New York. He notes that this property has an appraised value in excess of the debt outstanding. In addition, Mr. Browde explains that 30 unimproved acres of the property are under contract to be sold for $41.5 million and that the net proceeds from the sale will be used to retire the debt. Mr. Browde represents that the sale is expected to be closed during the Summer of 1992. As for the 39 acres of remaining land, he states that they contain two retail stores which will be sold by FFJ and the proceeds of such sale will be used to retire the remaining debt.

Finally, Mr. Browde represents that FFJ has a solid history of profitability despite losses suffered in 1989 and 1990 which were the only two during FFJ's 25 year existence. He attributes the first loss to non-recurring costs associated with the opening of FFJ's Woodbridge New Jersey store and the fact that FFJ does not defer and amortize store opening costs but absorbs such costs in

the year of the opening. He attributes the second loss to weak retail sales in the Northeast. Mr. Browde notes, however, that during 1991, FFJ has been profitable. He also states that Mr. Tabs has advised him that current sales figures are positive for FFJ, costs have been brought in line and that 1992 should be a profitable year for FFJ.

Based upon his review of FFJ's financial condition, Mr. Browde concludes that FFJ is fully capable of satisfying its payment obligations under the Amended Lease.

Mr. Browde agrees to monitor all aspects of the acquisition of the Property on behalf of the participants of the Plans and to safeguard the interests of the Plans, including supervising FFJ's compliance with the terms of the Amended Lease. In addition to the duties described above, Mr. Browde states that he will closely examine rental values of other real estate similar to the Property to ensure that, at all times, FFJ pays fair market rental value for its use of the Property as required by the Lease Assignment and Assumption Agreement.

14. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The interests of the Plans with respect to the acquisition of the Property and the execution and monitoring of the Amended Lease will be represented by Mr. Browde, the independent fiduciary who believes that such transactions are in the best interests of the Plans and their participants and beneficiaries; (b) the acquisition of undivided interests in the Property will allow the Plans to diversify their assets to include income-producing real property located in a prime commercial area; (c) the acquisition price that will be paid by the Plans for their interests in the Property will be less than the independently appraised value of the Property as determined by Mr. Peel; (d) the value of the proportionate interests in the Property that will be acquired by each Plan will not exceed 25 percent of the Plan's assets; (e) with the exception of mandatory title insurance charges, the Plans will not be required to pay any real estate fees or commissions in connection with such sale; (f) the Base Rent which will be incorporated into the Amended Lease is (as of March 17, 1992) in excess of the fair market rental value of the Property; (g) the Base Rent will be adjusted annually by Mr. Browde based upon an independent appraisal of the Property; (h) FFJ will incur all real estate taxes and other costs that are associated with the Property and which are incident to the Amended Lease; (i) the fee paid by FIS to FFJ under the License will be proportionate to the rental payment made by FFJ to the Plans under the Amended Lease; and (j) the License will have no effect on the Plans' ownership rights in the Property or FFJ's obligations to the Plans under the Amended Lease.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

British Gas Exploration and Production, Inc. Savings and Investment Plan (the Plan)

Located in Houston, Texas

[Application No. D–9046]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to an interest-free extension of credit to the Plan (the Advances) by British Gas Exploration and Production, Inc. (British Gas), the Plan sponsor and a party in interest with respect to the Plan, provided that: (a) No interest and/or expenses are paid by the Plan; (b) the proceeds of the Advances are used only in lieu of payments due with respect to Guaranteed Investment Contract Number GA–CG01333A3A (the GIC), issued by the Executive Life Insurance Company (ELIC); (c) the repayment of the Advances will be restricted to cash proceeds paid to the Plan by or on behalf of ELIC with respect to ELIC's obligations under the GIC; and (d) repayment of the Advances will be waived to the extent the Plan receives less than the disposition of the GIC than the total amount of the Advances.

Effective Date: If the proposed exemption is granted, the exemption will be effective June 1, 1992.

Summary of Facts and Representations

1. British Gas, a Delaware corporation which is headquartered in Houston, Texas, is an indirect wholly-owned subsidiary of British Gas plc, a British corporation headquartered in London, England. The Plan is a profit sharing plan which had 221 participants and total assets of approximately $7.8 million as of December 31, 1991. The Trustee of the Plan is NationsBank of Texas, N.A. (NationsBank), a national banking association.

2. The Plan is a participant-directed individual account plan under which participants may direct investment of deferrals of income and matching employer contributions in one or more of several investment funds under the Plan. Participants have the right to change their investments within and among the funds on the first day of each calendar quarter, except that participants may no longer transfer amounts into or out of the Frozen Fund described below. As originally adopted, the Plan provided for four investment funds: a Balanced Fund, a Fixed Deposit Fund, a Growth Fund, and am Employer Stock Fund.

3. The GIC was issued to NationsBank, as Plan trustee, on July 31, 1989, and matures on June 30, 1994. The GIC provides for a guaranteed interest rate, which when compounded daily, yields a rate of 8.75%. The GIC was acquired initially as an investment for the Fixed Deposit Fund under the Plan. As originally provided in the Plan, the assets of the Fixed Deposit Fund were required to be invested primarily in guaranteed investment contracts. The Plan was amended effective July 15, 1991, to provide that the assets in the Fixed Deposit Fund will be invested primarily in government securities or government securities mutual funds. As of June 30, 1990, the last day on which deposits could be made under the GIC, deposits of $2,019,355.98 had been made. As of December 31, 1991, the accumulated book value (i.e., principal plus accrued interest) of the GIC was $2,430,713.30, or approximately 19% of the total assets of the Plan. As a general matter, the GIC does not provide for repayment of the amounts described under the contract or accumulated interest until the contract matures. The GIC does, however, provide for repayments of principal and interest at their book value (deposits plus interest at the contract rate less prior withdrawals) upon the occurrence of

certain specified events, such as a participant-initiated transfer out of the Fixed Deposit Fund or distributions of benefits to participants.

4. On April 11, 1991, ELIC was placed into conservatorship by the California Insurance Commission. Consequently, ELIC has suspended payments on its guaranteed investment contracts, including the GIC held by the Plan. On December 26, 1991, the California conservator for ELIC approved the takeover of ELIC by Aurora National Life Assurance Co. Due to the nature of the rehabilitation process, however, it is still uncertain whether, or to what extent, ELIC will eventually make any further payments of interest or principal on the GIC. Moreover, the extent to which principal or interest with respect to respect to the GIC will be reimbursed by any state insurance guaranty fund is uncertain. In May, 1991, in response to the uncertainty created by ELIC's conservatorship proceedings, British Gas amended the Plan to segregate the GIC into a separate Frozen Fund under the Plan. No participant contributions to, or withdrawals from, the Frozen Fund are permitted.

5. British Gas wishes to advance money to the Plan so that participants can continue to make interfund transfers and to receive loans and distrubitions based on the GIC's book value. In order to accomplish this, British Gas proposes to enter into a loan agreement (the Agreement) with the Plan's trustee. Under the Agreement, British Gas will agree to advance funds to the Plan if, when, and to the extent that ELIC fails to make payments due to the Plan under the GIC. No interest will be charged to the Plan, nor will British Gas receive any fees, commissions, or other amounts related to the Agreement. The sole source of repayment of the Advances will be amounts subsequently paid to the Plan by or on behalf of ELIC or its successor.

6. Under the proposed Agreement, if ELIC fails to pay any amount due to the Plan under the GIC in full in accordance with the terms of the GIC, then British Gas will advance to the Plan at the time the payment is missed the difference between the amount due from ELIC and the amount (if any) actually paid by or on behalf of ELIC. British Gas believes that this will place the Plan and the participants in the Frozen Fund in substantially the same position they would have been in if ELIC had met its obligations under the GIC. Under the proposed transaction, neither the Plan nor the participants will be disadvantaged if payments by ELIC are delayed or if such payments ultimately do not equal the amount due under the GIC.

7. Payments to the Plan (other than the Advances from British Gas) with respect to the GIC (ELIC Payments) may be made by (a) ELIC; (b) any conservator, trustee or other person performing similar functions with respect to ELIC; or (c) any state guaranty fund or other entity acting as a surety with respect to ELIC. The Agreement provides that any ELIC Payment made at a time when payments are due under the GIC will be applied to the amount that is due for a withdrawal, transfer or payment of the value of the GIC on maturity. In the unlikely event that an ELIC Payment either exceeds the amount due or is made at a time when no payment is due under the GIC, the excess will be considered a partial prepayment and will be applied in accordance with the Agreement to reduce the GIC's then outstanding accumulated book value.

8. The last maturity date under the GIC is June 30, 1994. At that time, the entire amount due under the GIC will have been received by the Plan either from (or on behalf of) ELIC or from British Gas under the Agreement. Any payments to the Plan by or on behalf of ELIC will be repaid to British Gas until the entire amount of British Gas' Advances to the Plan has been repaid. If the payments by or on behalf of ELIC are not sufficient to repay fully British Gas' Advances, then British Gas will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount.

9. The applicant represents that the term of the proposed Agreement are favorable to the Plan and to participants and beneficiaries with assets in the Frozen Fund. If the Advances are not made to the Plan, the Plan will not be able to allow fund withdrawals from the Frozen Fund until ELIC's situation is resolved. Implementation of the rehabilitation plan could take some time, and the amount to be paid on the GIC will not be definitely determined until that process is complete. British Gas has not yet entered into the proposed Agreement. However, British Gas would like to begin making Advances under the Agreement by June 1, 1992. Accordingly, the applicant has requested that the relief proposed herein be made effective from that date.

10. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Advances will preserve the Plan's rights with respect to the GIC and enable the Plan to remain in the same position which would result from full and timely performance under the GIC by ELIC; (2) the Plan will pay no interest or incur any expenses with respect to the Advances; (3) repayment of the Advances will be restricted to payments by or on behalf of ELIC with respect to the GIC and no other Plan assets will be involved in the transaction; and (4) repayment of the Advances will be waived to the extent the plan receives less from the disposition of the GIC than the total amount of the Advances.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and

that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 5th day of May 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92–10810 Filed 5–7–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

SUMMARY: The National Commission on Migrant Education will hold its seventeenth meeting on Friday, May 22, 1992, during a conference call between Commission members and staff. The Commission was established by Public Law 100–297, April 28, 1988.

DATE, TIME, AND PLACE: Friday, May 22, 1992, 4:30 p.m. to 6:30 p.m., at 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

STATUS: Open—audio equipment provided for public attendance. Limited seating available.

AGENDA: Discussion of drafts of Chapters 3, 4, and 7 of the Commission's Final Report.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492–5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Overview Section) to the National Council on the Arts will be held on May 21, 1992 from 9:15 a.m.–5 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:15 a.m.–1:30 p.m. and from 2 p.m.–5 p.m. The topics will be introductory remarks, a Congressional update, education, issues of importance to the museum field and discussion of the FY 1994 budget.

The remaining portion of this meeting from 1:30 p.m.–2 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: April 29, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–10901 Filed 5–7–92; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Solo Theater Artists Fellowships Section) to the National Council on the Arts (published May 1, 1992, No. 57FR18937) originally scheduled to be held on May 19–20, 1992 from 9:30 a.m.–6 p.m. has been expanded to include May 21 from 9:30 a.m.–12:30 p.m.

The portion of the notice which read "A portion of this meeting will be open to the public on May 19 from 9:30 a.m.–10:30 a.m. The topics will be opening remarks and application review criteria." should read "Portions of this meeting will be open to the public on May 19 from 9:30 a.m.–10:30 a.m. and May 21 from 11 a.m.–12:30 p.m. The topics will be opening remarks, application review criteria, policy discussion and guidelines review."

The portion which read "The remaining portions of this meeting on May 19 from 10:30 a.m.–6 p.m. and May 20 from 9:30 a.m.–6 p.m. are for the purpose of . . ." should read "The remaining portions of this meeting on May 19 from 10:30 a.m.–6 p.m., May 20 from 9:30a.m.–6 p.m., and May 21 from 9:30 a.m.–11 a.m. are for the purpose of . . ."

Further information in reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: May 5, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–10902 Filed 5–7–92; 8:45 am]

BILLING CODE 7537–01–M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Special Projects: Individual Collaborations Section) to the National Council on the Arts will be held on May 21, 1992 from 1:30 p.m.–6 p.m. and May 22 from 9:30 a.m.–6 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on May 21 from 1:30 p.m.–6 p.m. and May 22 from 4:30 p.m.–6 p.m. The topics will be opening remarks, review criteria, policy discussion, and guidelines review.

The remaining portion of this meeting on May 22 from 9:30 a.m.–4:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels

which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: May 5, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–10904 Filed 5–7–92; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 43rd meeting on May 28 and 29, 1992 at 8:30 a.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to public attendance. Notice of this meeting was previously published in the **Federal Register** on Wednesday, April 15, 1992 (57 FR 13124).

The agenda for the subject meeting shall be as follows:

A. Consider rulemaking for a Controlled-Use Area/Design Basis Accident Dose Limit for the operation of a high-level radioactive waste repository.

B. Review proposed changes to 10 CFR part 72, concerning emergency planning for Independent Spent Fuel Storage Installations and Monitored Retrievable Storage facilities.

C. Address a supplemental request from Chairman Selin to outline a top down functional diagram to conduct a full systems analysis of the overall HLW management and disposal program.

D. Hear a briefing on relevant topics discussed at the 24th Annual Meeting of the Conference of State Radiation Control Program Directors.

E. Hear a briefing on the adoption by EPA of a revised Hazard Ranking System for use in assessing the threat associated with the release or potential release into the environment of hazardous chemicals and/or radioactive materials.

F. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: May 4, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–10797 Filed 5–7–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 040–08724–OM, ASLBP No. 92–661–05–OM]

Chemetron Corp.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and § § 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Chemetron Corp.
Providence, Rhode Island 02903
License No. SUB–1357
(Harvard Avenue Site and Bert Avenue Site Characterization)

This Board is being established pursuant to the request by Chemetron Corporation (Licensee) for a hearing regarding an Order issued by the Director, Office of Nuclear Material Safety and Safeguards, dated April 8, 1992, entitled "Order Modifying License (Effective Immediately)." The Order by the Office of NMSS imposed a new license condition upon Licensee, thus modifying License No. SUB–1357 effective immediately.

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

James P. Gleason, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 1st day of May 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–10796 Filed 5–7–92; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10 a.m. on Tuesday, June 9, 1992, in the Stewart Nelson Plaza Building, suite 202, 143 N. Main Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, Stewart Nelson Plaza, 143 N.

Main Street, Concord, New Hampshire 03302–1257, (603) 225–1400.

Dated: May 4, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–10755 Filed 5–7–92; 8:45 am]

BILLING CODE 8205–01–M

Region I Advisory Council Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 4 p.m. on Wednesday, May 20, 1992, at the Sheraton Conference Center, Burlington, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: May 4, 1992.

Caroline J. Beeson,

Assistant Administrator Office of Advisory Councils.

[FR Doc. 92–10756 Filed 5–7–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., GNSS Transition and Implementation Strategy Task Force; Meeting

Task Force 1—Working Group 3: Transition

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 fourth meeting of Working Group 3 of the GNSS Transition and Implementation Strategy Task Force to be held May 14, 1992, at AOPA, 500 E Street, Southwest, suite 920, Washington, DC 20591, from 9:30 a.m. to 1 p.m.

The agenda for this meeting is as follows: (1) Introduction of attendees; (2) Review of draft comments from April 23 meeting; (3) Formulation of final comments for submission to GNSS Task Force on June 2, 1992; (4) Other business; (5) Adjourn.

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 April 30, 1992.

Richard Arnold,

Designated Officer.

[FR Doc. 92–10774 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

[Special Committee 175]

RTCA, Inc.; Minimum General Specification for Ground-Based Electronic Equipment in the National Airspace System; 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 second meeting of Special Committee 175 to be held June 1–2, 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 summary of meeting held April 15–16, 1992; (3) Presentations by Working Groups 1 and 2 on suggested changes to specification FAA–G–2100e; (4) Discussion on approach and action plans for next committee meeting; (5) Other business; (6) 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 April 30, 1992.

Richard Arnold,

Designated Officer.

[FR Doc. 92–10775 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

[Special Committee 173]

RTCA, Inc., Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radar; 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 fourth meeting of Special Committee 173 to be held June 3–4, 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) Review and approval of meeting agenda; (3) Approval of the summary of the third meeting held February 20–21, 1992, RTCA Paper No. 228–92/SC173–29 (previously distributed); (4) Approval of the minutes of the first meeting of Working Group 1 held February 19, 1992, RTCA Paper No. 228–92/SC173–29 (previously distributed); (5) Status report of flight programs; (a) Bendix; (b) Collins; (c) Westinghouse; (6) Report on NASA Windshear Conference; (7) Working Group 1 activities; (a) Status report; (b) Review and approval of MOPS for nose-mounted radomes; (8) Review of material for incorporation into the draft MOPS for airborne weather radar with forward looking windshear capability; (9) Other business; (10) 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 April 30, 1992.

Richard Arnold,

Designated Officer.

[FR Doc. 92–10776 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; City of Lubbock, TX

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 and attendant railroad relocation project in the city of Lubbock and Lubbock County, Texas.

FOR FURTHER INFORMATION CONTACT: C.L. Chambers, District Engineer, Federal Highway Administration, room 826, Federal Building, 300 East 8th Street, Austin, Texas 78701. John E. Rantz, P.E., Supervising Resident Engineer, Texas Department of Transportation, P.O. Box 771, Lubbock, Texas 79408–0771.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation and the city of Lubbock, will prepare a draft EIS on a proposal to upgrade a segment of U.S. Highway 82 in the city of Lubbock. The proposed improvements will involve the construction of a controlled access freeway from approximately 1.25 miles southwest of Southwest Loop 289 to approximately 0.80 mile east of Northeast Interstate Highway 27, a distance of approximately 8.75 miles. To accommodate freeway construction, the proposal would relocate a portion of the Seagraves, Whiteface and Lubbock Railroad (SW&LR) adjacent to the existing U.S. 82 highway to westerly portions of Lubbock city and county. The segment of the railroad to be relocated is approximately 6.50 miles in length from southwest of Southwest Loop 289 to University Avenue. The preferred route option for rail relocation would follow the existing right-of-way of the Brownfield branch of the SW&LR from Quistna Avenue to the junction of the Brownfield and Levelland branches of the SW&LR, known as the "Doud Junction", located approximately one-half mile southwest of Loop 289. At that point, the alternative curves back to the northwest and joins the existing Levelland branch, travelling along that right-of-way to the half section line between F.M. 179 and Quistna Avenue. From there it travels generally northward across farmlands approximately one mile and turns northeasterly to F.M. 179. The route then follow the west side of F.M. 179 approximately 1.5 miles where it turns northwesterly back to the half section line. The route then travels north approximately 2.5 miles where it turns to the east and parallels Kent Street approximately 1700 feet north of the road. The route crosses U.S. Highway 84 and joins the Atchison, Topeka and Santa Fe Railway Company line at the Broadview Junction. The preferred route length is approximately 10.97 miles.

This proposed freeway is considered necessary to provide a connecting-link between the city's southwest growth areas, Texas Tech University, the central business district, and easterly segments of the city and to provide for existing and projected east-west city traffic demands. Relocation of the SW&LR is considered necessary to provide the freeway with right-of-way widths adequate for freeway design safety criteria and to achieve the connecting-link and other purposes of the freeway. Alternatives to be discussed in the draft EIS include: (1) Taking no action; (2) transportation system management; (3) constructing the freeway at a 37th/38th Street corridor; (4) constructing the freeway at a 34th Street corridor; (5) making limited grade separation and one-way street pairs improvements at U.S. 82; (6) design alternatives that construct the highway at U.S. 82 adjacent to the existing rail line which remains at its existing location; (7) design alternatives that construct a freeway with the railroad in the freeway median; and (8) a preferred design that would relocate the railroad. Rail route alternatives include: (1) Taking no action; (2) six preliminary route alternatives west of Loop 289 and east of Reese Air Force Base and one preliminary alternate west of Reese Air Force Base; and (3) four primary route alternatives west of Loop 289 and east of Reese Air Force Base and including the preferred alternate.

Major considerations in the proposal's ongoing studies are the costs of rights-of-way and the numbers and types of relocations necessary to implement the project. Other environmental considerations such as land usage, socioeconomic, air quality, traffic and train noise, and wetlands are also important study prerequisites to project implementation.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. Six public meetings have been held. A public hearing(s) will be held as early as is feasible in the proposal's design development stage. Public notice will be given of the time and place of the hearing(s). The draft EIS will be available for public and agency review and comment. No formal scoping meetings are planned at this time.

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 or TxDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: May 1, 1992.

C.L. Chambers,

District Engineer, Austin, Texas.

[FR Doc. 92–10800 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–22–M

Intelligent Vehicle Highway System (IVHS) Field Operational Test Program

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice.

SUMMARY: This announcement provides guidelines for the U.S. Department of Transportation's (DOT) Intelligent Vehicle Highway Systems (IVHS) field operational test program. The IVHS field operational test program is designed to evaluate technologies, institutional and/or financial arrangements that hold the promise of improving mobility and transportation productivity, enhancing safety and reducing congestion on the Nation's highways. Periodically, the DOT will solicit participation from the public and private sector to form partnerships to conduct field operational tests in support of the national IVHS program. The solicitations will identify key IVHS technologies or program areas where the DOT is seeking offers for operational tests. The selection criteria contained in this announcement will be used to assess an operational test's potential for contributing to the advancement of the national IVHS program, to evaluate the technical and management aspects of the test, and to determine the appropriateness of the proposed Federal role in the project. The Federal Highway Administration (FHWA) is the lead agency within the U.S. DOT for the IVHS program and was given responsibility for developing a consensus on this process.

FOR FURTHER INFORMATION CONTACT: Mr. George Schoene, Chief, Operational Tests Division, HTV–12, (202) 366–6479; or Ms. Julie Dingle, Office of the Chief Counsel, HCC–32, (202) 366–0780, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Intelligent Vehicle Highway System (IVHS) program consists of a range of advanced technologies and ideas which,

in combination, can improve mobility and transportation productivity, enhance capacity and safety, maximize the use of existing transportation facilities, conserve energy resources, and reduce adverse environmental effects. The aim of the national IVHS program is to deploy advanced technologies to help solve transportation problems and improve safety.

Operational tests serve as the transition between research and development (R&D) and full scale deployment of IVHS technologies. An operational test integrates existing technology, R&D products, institutional and perhaps regulatory arrangements to test one, and usually more, new technological, institutional or financial elements in a real world test bed. The tests permit an evaluation of how well newly developed IVHS technologies work under real operating conditions and assess the benefits and public support for the product or system. Operational tests are conducted in a "real world" operational highway environment under "live" transportation conditions. This distinguishes operational tests from research projects or other kinds of testing, for example simulation testing, test tracks, in-service fleet evaluations, or tests on facilities that are temporarily closed to the public.

IVHS operational tests are generally conducted as cooperative ventures between the U.S. DOT and a variety of public and private partners. An IVHS operational test typically involves a carefully crafted partnership which is negotiated among Federal, State, and local governments, private companies, universities and other institutions. Funding, technical, and administrative responsibilities are shared among the partners in the operational test.

IVHS Program Description and Objectives

IVHS is not a single static technology, but a continually evolving collection of technologies. These technologies may be grouped into five broad IVHS functional areas, which often overlap or are interrelated. The IVHS program objectives for each area are described below.

Advanced Traffic Management Systems (ATMS) are integrated, areawide traffic signal systems and freeway surveillance and control systems which utilize advanced technologies to provide improved surveillance methods, new integrated traffic adaptive control strategies, improved incident detection and response, and enhanced multi-jurisdictional coordination. The objectives of the ATMS operational test program are to test and evaluate new supporting technologies including:

(1) Improved surveillance methods,

(2) New integrated, traffic adaptive control strategies for freeway and street network traffic responsive control systems,

(3) A standardized data base system describing the quality of traffic flow on both freeway and street networks to support both control and traveler information systems,

(4) Improved computer analysis tools including real-time simulation models and expert systems, that aid operators in making areawide traffic management decisions,

(5) Electronic toll and traffic management systems which reduce delays at toll collection points and act as a source of traffic flow information, and

(6) Fully integrated, metro wide, real time traffic management systems which use new technology and/or institutional approaches.

Advanced Traveler Information Systems (ATIS) encompass various technologies and approaches for providing a wide range of services to the traveler and/or driver (e.g., real time traffic status, congestion or incident reports, navigation and route guidance). The objectives of the ATIS program are to test and evaluate:

(1) Real-time driver information and guidance systems which provide traffic and traveler information to private and commercial vehicles,

(2) The capability of transmitting roadside signing information to properly equipped private and commercial vehicles for the on-board display of signs, and

(3) Systems that provide two-way communications between the vehicle and the roadside to enable exchanging traffic and travel data and to permit emergency/safety alerts, with location, to be transmitted by the traveler.

Commercial Vehicle Operations (CVO) focus on a wide range of commercial fleet operations, including advanced approaches for electronic permitting and reporting systems for use by the motor carriers and State regulatory and licensing agencies and for automatically checking and clearing vehicles with the proper credentials. This area includes the investigation of Weigh-In-Motion (WIM) and Automatic Toll Collection. The objectives of the CVO program are to test and evaluate:

(1) Electronic permitting and reporting systems for use by motor carriers and State regulatory and licensing agencies,

(2) Electronic systems for automatically checking motor carriers and clearing those vehicles with proper credentials,

(3) Systems which monitor and, if necessary, report on the status of critical driver and vehicle safety features while the motor carrier is traveling, and

(4) Technologies that would monitor and report on the identity and/or condition of especially sensitive cargo.

Advanced Public Transportation Systems (APTS) introduce innovative traveler information and communications technologies to increase use of public and private mass transportation systems and allow transit operators to improve the efficiencies of fleet operations and reduce operating costs. The objectives of the APTS program are to test and evaluate:

(1) Audio and visual information systems which increase the utilization of public transportation by presenting potential users, especially commuters who normally drive alone, with the range of transit options to consider in making the mode choice decision.

(2) Vehicle location and communications technologies to monitor, control and manage public transportation services in order to provide the most effective and efficient public transportation systems.

(3) Audio and visual information systems to provide users who have selected a public transportation mode with real-time information on transportation service schedules, routes and options.

(4) Systems to simplify fare payment by use of electronic media and integrated fare media for all transportation modes.

(5) Systems which grant preferential treatment or access to facilities reserved for vehicles carrying a pre-set minimum number of passengers to encourage travelers to shift to high occupancy vehicles, and

(6) Systems which expand the use of ridesharing by making more convenient and timely information available on ride matching.

Advanced Vehicle Control Systems (AVCS) involve the application of new vehicle warning and control devices, such as the use of headway monitoring and obstacle detection (proximity) devices in the near-term and the development and testing of fully automated vehicles in the longer term. The objectives of the AVCS program are to operationally test and evaluate:

(1) Vehicle-based systems for detecting objects and warning drivers of potentially dangerous conditions.

(2) Systems such as automated braking, speed control and steering

which assist the driver in responding to potential accident situations.

(3) Systems to allow vehicles in platoons to automatically follow each other at high speeds and close spacing, increasing the capacity and safety of existing roadway lanes, and

(4) Technologies to completely automate driving functions for vehicles operation on specially-equipped highway systems.

DOT's Role in the IVHS Program

Operational tests play a significant role in achieving the IVHS program objectives, and are thus a major element of the DOT IVHS program. The general Federal role in the national IVHS program is to act as a leader and a catalyst, and to assure adequate emphasis on public benefits. The Federal government also guides the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale.

The participating DOT administrations, the Federal Highway Administration (FHWA), the National Highway Traffic Safety Administration (NHTSA), the Federal Transit Administration (FTA) (formerly the Urban Mass Transportation Administration), and the Research and Special Programs Administration (RSPA), have interest in this area, although their specific program needs tailor the particular arrangements of the operational test. In many cases, there are opportunities for two or more administrators to cooperate in a single operational test.

The FHWA's IVHS program utilizes field operational tests to examine and test a broad range of technologies and issues. Current operational test efforts are examining technologies used in the IVHS areas of Advanced Traffic Management Systems that will provide improved surveillance methods and new, integrated traffic adaptive control strategies and enhanced multi-jurisdictional coordination; Advanced Traveler Information Systems that will provide real-time traffic and route guidance information to private and commercial vehicles; and Commercial Vehicle Operations that will provide an electronic permitting and reporting system for use by motor carriers and State regulatory and licensing agencies and for automatically checking motor carriers and clearing those vehicles with proper credentials.

As part of the overall DOT initiative in IVHS, FTA (formerly UMTA) will utilize field operational tests to demonstrate and evaluate technologies for the Advanced Public Transportation Systems (APTS) program. This program is structured to contribute innovative applications of advanced traveler information and communications technologies that most benefit public transportation. Operational tests will evaluate, for example, the mode choice impact on commuters of more timely ride matching information using various technologies in the home and/or work place. Other tests will utilize new technologies to allow transit operators to facilitate more efficient and safer fleet operations and to reduce unit operating costs. Because of the heavy emphasis on public benefits in the APTS component, many of these operational tests will involve only public sector partners. Operational test selection will be guided by the criteria herein, following FTA program procedures in FTA (UMTA) Circular C6100.1B, August 24, 1988.

NHTSA may utilize field operational tests to acquire the data/information necessary to meet the requirements of the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, 80 Stat. 718, as amended) to ensure that Federal Motor Vehicle Safety Standards are "reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed * * *" (15 U.S.C. 1392) and to "* * * determine the relationship between motor vehicle or motor vehicle equipment performance characteristics and (a) accidents involving motor vehicles and (b) the occurrence of death, or personal injury resulting from such accidents * * *" (15 U.S.C. 1395). IVHS field operational tests will be used, for example, to determine the performance, effectiveness, reliability, maintainability and/or cost of potential IVHS crash avoidance countermeasures.

Operational Test Solicitation

IVHS operational tests are conducted as cooperative ventures between the U.S. DOT and a variety of public and private partners, including State and local governments, private companies, universities and other institutions. Funding, technical, and administrative responsibilities are shared among the partners in the operational test. Periodically, the DOT will solicit participation from the public and private sector to form cooperative ventures and/or multimodal partnerships to conduct field operational tests in support of the national IVHS program. The solicitation will identify key IVHS technologies or program areas where the DOT is seeking offers for cooperative ventures and/or multimodal operational tests.

When appropriate, DOT modal administrations may also initiate IVHS operational tests by other methods, including directly seeking partners for specific projects.

Review Process

A review process has been established to evaluate responses to the solicitation for participation in the IVHS operational test program. A DOT multi-agency committee will review offers for cooperative ventures and/or multimodal operational tests to determine how well they meet existing IVHS information needs, what unique contributions each makes to the overall IVHS program, and to assess the capabilities and commitments of the project partners.

Selection Criteria

The selection criteria below will be used to assess an operational test's potential for contribution to the advancement of the national IVHS program, to evaluate the technical and management aspects of the test, and to determine the appropriateness of the proposed Federal role in the project.

I. Relationship to National Program

The proposed IVHS Operational Test shall:

1. Directly contribute to the higher priority issues or needs of the DOT IVHS program involving advanced technologies that offer several of the following:

a. Increased mobility and operational efficiency,

b. Improved safety,

c. Contributions towards clean air and energy efficiency goals,

d. Increased transit ridership and efficiency,

e. Increased vehicle occupancy levels through the improved operation of high occupancy vehicle facilities,

f. Enhanced commercial productivity and regulatory efficiency,

g. Improved commercial vehicle safety, and

h. Improved U.S. international competitiveness.

2. Advance the development and eventual implementation of the proposed technology or system. Demonstrate that there is an acceptable basis for believing that the technologies being tested will ultimately be successfully deployed or implemented.

3. Have meaningful, distinguishable features involving technical, institutional, market, or other important characteristics which have not been addressed in operational tests to date. Projects should not replicate past or current tests unless such replication

provides a significant contribution to advancing the IVHS program.

4. Fit within a logical evolution of the IVHS program and/or supporting technology.

II. Project Management and Proposed Partnership

The proposed IVHS Operational Test plan shall:

1. Provide an overall level of confidence that the test will be successfully completed.

2. Demonstrate an acceptable level of commitment, management capability and business reliability of the partners and strong state and local support for the project when they are major partners.

3. Demonstrate that there is a State and local commitment to a national technology sharing effort and a willingness to dedicate the time and effort required to share the technical and institutional results of the test with others.

4. Clearly define the roles and responsibilities of the principal partners and demonstrate they have the ability to perform their assigned responsibilities. For large or complex tests, an experienced systems manager to support the project is desirable.

5. Provide sufficient background to validate the accuracy of the cost and schedule estimates for the operational test.

6. Minimize any potential negative effects of the test and demonstrate an awareness and approach for dealing with complicating technical or institutional factors which might adversely affect the test. Innovative or challenging ways for dealing with these factors will be of particular interest.

7. Identify the proposed agreements for sharing of technology developed under this operational test.

8. Identify long range plans for full scale deployment of the technologies when the operational test has been completed.

III. Suitability of the Test Site, Vehicle Fleet and Infrastructure

The proposed Operational Test shall:

1. Demonstrate that the operational test is part of a continuing, ongoing transportation management program or that there is a good opportunity for components of the operational test to evolve into operational systems after the testing is completed.

2. Demonstrate that the size and characteristics of the test/site are adequate for meaningful evaluation of the proposed system and/or technology and that the test/site has the operational or environmental characteristics to challenge the operation, reliability and durability of the product/prototype being evaluated.

3. Assure that local public transportation services are in place as necessary to assure a valid market test of the operational test technology and that the local public transportation providers are interested in the adoption of new technologies.

4. Provide the opportunity to evaluate the safety benefits of systems and/or operations where such issues are important considerations.

5. Maintain adequate records to support the project evaluation with regard to operation and maintenance of the device/system being tested.

IV. Federal Role

The proposed Operational Test shall:

1. Assure that the Federal Government role in the operational test is consistent with the Department's statutory role and responsibilities.

2. Assure Federal participation in the design and conduct of the project evaluation to ensure that the project is independently evaluated on a national program scale.

3. Assure that the proposed contribution to the operational test is consistent with agency policy and appropriate to the type of scope of the test. By statute, the maximum share of an operational test funded from Federal funds, including IVHS funds, cannot exceed 80%. The remaining 20% must be from non-Federally derived funding sources and must consist of either cash, substantial equipment contributions which are wholly utilized as an integral part of the project, or personnel services dedicated full-time to project purposes for a substantial period, as long as these staff are not otherwise supported with Federal Funds. In order to maximize available Federal IVHS dollars and consistent with agency policy, prospective partners are encouraged to increase their share of 50%. Additional funds provided over the required 20% minimum may come from a variety of funding sources and may include the value of Federally-supported projects directly associated with the IVHS project. These contributions may come from State, local government, or private sector participants. Priority will be given in the selection process to those operational test projects that include a substantial State or local contribution of cash to the project.

4. Demonstrate that Federal IVHS funds are not being used when regular Federal-aid, State, or private funds can and should be used or where the primary benefit of the operational test is in areas of private sector responsibility.

5. Assure that Federal participation in the proposed test is an appropriate use of the Federal Government's resources.

(Secs. 6051 through 6059, Pub. L. 102-240, 105 Stat. 1914, 2189; 23 U.S.C. 315)

Issued on: May 1, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-10751 Filed 5-7-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 92-18; Notice 1]

Receipt of Petition for Determination That Nonconforming 1981 BMW 628 CSi Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1981 BMW 628 CSi passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1981 BMW 628 CSi that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition on June 8, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

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 (the Act), 15 U.S.C. 1397(c)(3)(A)(i), 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 that

"(I) 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 either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to determine whether 1981 BMW 628 CSi passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1981 BMW 633 CSi. Campagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1981 BMW 633 CSi, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 628 CSi is substantially similar to the 633 CSi, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 628 CSi's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1981 model 628 CSi, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1981 model 633 CSi that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1981 model 628 CSi is identical to the certified 1981 model 633 CSi with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 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 Fluid*, 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.*

Petitioner also contends that the vehicle 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 which incorporate sealed beam headlamps 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 rearview mirror, which is convex but does not bear the required warning statement.

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 outside 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:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and 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, the petitioner states that the bumpers on the 1981 model 628 CSi must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 8, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A) (i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: May 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–10745 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–56; Notice 2]

Determination That Nonconforming 1986 BMW 518i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1986 BMW 518i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1986 BMW 518i 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 and certified by its manufacturer as complying with the safety standards (the 1986 BMW 528e), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective May 8, 1992.

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 (the Act), 15 U.S.C. 1397(c)(3)(A)(i), 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 that

"(I) 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 either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1986 BMW 518i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on December 18, 1991 (56 FR 65776) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

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 #4 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1986 BMW 518i is substantially similar to a 1986 BMW 528e 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 29, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92–10746 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–59–M

Denial of Petition for Import Eligibility Determination

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration ("NHTSA") under section 108(c)(3)(C)(i)(I) of the National Traffic and Motor Vehicle Safety Act ("the Act"), 15 U.S.C. 1397(c)(3)(C)(i)(I), and 49 CFR part 593. The petition, which was submitted by ICI International, Inc. of Orlando, Florida ("ICI"), a Registered Importer of motor vehicles, requested NHTSA to determine that a 1990 Mercedes Benz 300 SE passenger car that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to the 1991 Mercedes Benz 300 SE, a vehicle that was originally manufactured for importation into the sale in the United States and that was certified by its original manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Contrary to section 108(c)(3)(A)(i)(I) of the Act, 15 U.S.C. 1397(c)(A)(i)(I), the U.S. certified comparison vehicle identified in the petition is not of the same model year as the vehicle for which the import eligibility determination is sought. Thus, the petition may not be granted. In any case, even if this discrepancy did not exist, ICI has not demonstrated that the vehicle is question is capable of being readily modified to conform to Standard No. 208, *Occupant Crash Protection.* That standard requires that passenger cars manufactured on or after September 1, 1989 be equipped with passive restraints at each front outboard seating position. Under the terms of the standard, as it applies to vehicles built prior to September 1, 1993, if the driver is adequately protected by an air bag, then the outboard front seat passenger need only be protected by a manually operated lap/shoulder belt. In its petition, ICI merely stated that it intended to conform the 1990 Mercedes Benz 300 SE to Standard 208 by installing an airbag, without supplying engineering data to substantiate that equipment installed would be identical to that found in the U.S. certified companion vehicles or would otherwise satisfy the standard. As a consequence, the petition does not clearly demonstrate that the 1990 Mercedes Benz 300 SE is eligible for importation. The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with section 108(c)(3)(C)(iii) of the Act, 15 U.S.C. 1397(c)(3)(C)(iii), and 49 CFR 593.7)e), NHTSA will consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Issued on: April 29, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92–10747 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92-19; Notice 1]

Receipt of Petition for Determination That Nonconforming 1986 BMW 728i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1986 BMW 728i passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1986 BMW 728i that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is June 8, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

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 (the Act), 15 U.S.C. 1397(c)(3)(A)(i), 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 that

"(I) 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 either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1986 BMW 728i passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1986 BMW 735i. Champagne has submitted information indicating that Bayerische Motoren-Werke A.G., the company that manufactured the 1986 BMW 735i, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 728i is substantially similar to the 735i, and "differs mainly in engine size and minor options which go with it." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Bayerische Motoren-Werke A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 728i's absence from the United States market could be attributed to "salability considerations or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1986 model 728i, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1986 model 735i that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1986 model 728i is identical to the certified 1986 model 735i with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *,* 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 Fluid,* 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.*

Petitioner also contends that the vehicle 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 which incorporate sealed beam headlamps 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 rearview mirror, which is convex but does not bear the required warning statement.

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 outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and 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, the petitioner states that the bumpers on the 1986 model 728i must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 8, 1992.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(II) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: May 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–10748 Filed 5–7–92; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 90
Friday, May 8, 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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, May 12, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 337 of the Corporation's rules and regulations, entitled "Unsafe and Unsound Banking Practices," which are designed to implement changes made by the Federal Deposit Insurance Corporation Improvement Act in the regulatory scheme for brokered deposits.

Memorandum and resolution re: Proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum and resolution re: Proposed amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which would increase the assessment to be paid by Bank Insurance Fund members.

Memorandum and resolution re: Proposed regulation establishing a transitional risk-based assessment.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 5, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–10949 Filed 5–6–92; 2:11 pm]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, May 12, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removal, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 5, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–10951 Filed 5–6–92; 2:23 pm]

BILLING CODE 6714–0–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, May 5, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Memorandum and resolution regarding selection of servicer to manage, liquidate, and collect the asset pools from three failed Connecticut banks and Dollar Dry Dock Bank, While Plains, New York.

Matters relating to the probable failure of certain insured banks.

Reports of the Office of Inspector General.

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr. concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), Mr. John F. Downey, acting in the place and stead of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters

on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 500—17th Street, NW., Washington, DC.

Dated: May 5, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–10953 Filed 5–6–92; 2:24 pm]

BILLING CODE 6714–0–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., May 18, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping and agency liaison.
2. Benefits administration.
3. Investments.
4. Participant communications.
5. Approval of the minutes of last meeting.
6. Thrift Savings Plan activities report by the Executive Director.
7. Approval of the update of the FY 1992–FY 1993 budget document.
8. Investment policy review.
9. Audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: May 4, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–10883 Filed 5–4–92; 4:46 pm]

BILLING CODE 6760–01–M

federal register

Friday
May 8, 1992

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Appraisals of Preservation Value Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990; Final Guidelines; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3307; FR-3074-N-01]

RIN 2502-AF45

Final Guidelines for Determining Appraisals of Preservation Value Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990

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

ACTION: Notice.

SUMMARY: On May 2, 1991 the Department published a proposed rule entitled "Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing." In conjunction with this proposed rule, HUD has developed written Appraisal Guidelines for the determination of preservation values for such housing. A draft version of the guidelines was published in the **Federal Register** on December 12, 1991 in order to afford opportunity for public comment. The purpose of this Notice is to publish for effect HUD's final version of these Appraisal Guidelines.

EFFECTIVE DATE: May 8, 1992.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief, Valuation Branch, Office of Insured Multifamily Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone, voice (202) 708-0624; TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Title VI subtitle A of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, approved November 28, 1990, contains the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA").

LIHPRHA provides the Secretary of HUD with permanent authority to deal with HUD-assisted multifamily projects where owners have the option of prepaying their mortgage loans. The statute's basic objectives are to assure that most of the "prepayment" inventory of HUD-assisted housing remains affordable to low income households, and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties. A proposed rule to implement the 1990 Act by amending 24 CFR part 248 was published in the **Federal Register** on May 2, 1991 under the title "Prepayment of a HUD-Insured Mortgage by an Owner of Low Income Housing" (56 FR 20262). The Department provided for a 60-day period after the publication of the proposed rule for the submission of public comments (until July 1, 1991). The Department has responded to the public comments in conjunction with the publication of an interim rule on April 8, 1992, 57 FR 11992. The interim rule and these Appraisal Guidelines both become effective on May 8, 1992.

Section 248.111 of the interim rule (Appraisal and Preservation Value of Eligible Low Income Housing) implements section 213 of LIHPRHA by establishing the procedure for appraising eligible low income housing for which an owner has submitted a notice of intent to transfer the project or to extend its low income affordability restrictions. Two appraisals must be conducted within the four months following submission of the notice of intent. Both the owner and the Secretary shall retain an independent appraiser to conduct an appraisal of the property. Both appraisers shall possess the same minimum qualifications, as provided in the interim rule published on April 8, 1992, to determine the project's extension and transfer preservation values. If the appraisals yield different preservation values, § 248.111 establishes a one month period during which the owner and Secretary will attempt to reach agreement as to the project's preservation values, based on the results from both appraisals. If agreement cannot be reached within the one-month period, the owner and the Secretary must jointly select a third appraiser whose determination of preservation values will be binding on both parties.

As a part of this process, section 213(c) of LIHPRHA requires that HUD develop written guidelines for the appraisals of preservation value. In its entirety, section 213(c) reads as follows:

> (c) Guidelines.—The Secretary shall provide written Guidelines for appraisals of preservation value, which shall assume repayment of the existing federally assisted mortgage, termination of the existing low-income affordability restrictions, and costs of compliance with any State or local laws of general applicability. The Guidelines may permit reliance upon assessments of rehabilitation needs and other conversion costs determined by an appropriate State agency, as determined by the Secretary. The Guidelines shall instruct the appraiser to use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding 3 years) or projected operating expenses after conversion in determining preservation value. The Guidelines established by the Secretary shall not be inconsistent with customary appraisal standards. The Guidelines shall also meet the following requirements:
>
> (1) Residential Rental Value.—In the case of preservation value determined under subsection (b)(1) [extension of low-income affordability], the Guidelines shall assume conversion of the housing to market-rate rental housing and shall establish methods for (A) determining rehabilitation expenditures that would be necessary to bring the housing up to quality standards required to attract and sustain a market-rate tenancy upon conversion, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to market-rate multifamily rental housing.
>
> (2) Highest and Best Use Value.—In the case of preservation value determined under subsection (b)(2) [transfer of the property], the Guidelines shall assume conversion of the housing to highest and best use for the property and shall establish methods for (A) determining any rehabilitation expenditures that would be necessary to convert the housing to such use, and (B) assessing other costs that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

Written guidelines were prepared by the Department in compliance with the above-quoted section 213(c) of LIHPPHA. A draft version of the Guidelines was published in the **Federal Register** on December 12, 1991 (56 FR 64932), in order to provide an opportunity for public comment. The purpose of this notice is to respond to public comments received by the Department on its earlier draft guidelines, and to publish HUD's final version of the Appraisal Guidelines for effect.

Summary of Issues Raised in Public Comments on FR-3074 Guidelines for Determining Preservation Value Under the Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) of 1990

The Department received 168 written comments from the public on the guidelines. Virtually all of the comments were from project owners or managers, or law firms or other organizations representing owners and managers. What follows is a statement of the issues raised by these comments, and the Department's responses.

1. Conformity with "USPAP", and Takings Implications of the Appraisal Guidelines

Many comments addressed the issue of eminent domain. One of the most detailed of these comments was from the National Corporation for Housing

Partnerships. Excerpts from these comments are quoted below:

—As provided in Executive Order 12630 (dated 3–15–88), regulations imposed on private property that substantially affect its value or use may constitute a taking of property. The use of value of private property should be scrutinized to avoid Governmental actions that may have a significant impact to avoid undue or unplanned burdens on the public fisc.' As a result, the LIHPRHA Guidelines must permit appraisers to determine fair market value; if not, they will represent an incremental taking without just compensation * * *.

—Under FIRREA (Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989), appraisers must prepare valuations in conformity with USPAP. To find fair market value, the appraiser must use only USPAP and the appraiser's professional judgment, buttressed by persuasive documented evidence, for critical assumptions and estimates. By contrast, the LIHPRHA appraisal guidelines seek to impose a variety of constraints upon appraisers, some of which may be in conflict with the appraiser's judgment. Those constraints must be deleted from the guidelines.

* * * * *

—The LIHPRHA statutory mandate that the appraisal guidelines be consistent with customary appraisal standards can only be interpreted to mean that they must be consistent with USPAP. In addition, section 142(e)(1)(A) of the Department of Housing and Urban Development Reform Act of 1989 ("DHUDRA") requires that the appraisal of properties to be insured by the Federal Housing Administration shall be performed in accordance with generally accepted appraisal standards, such as the appraisal standards promulgated by the Appraisal Foundation (these standards are the USPAP). Every owner or buyer who recapitalizes under LIHPRHA has an entitlement to an FHA-insured section 241(f) equity takeout or acquisition loan, so section 142(e)(1)(A) of DHUDRA must apply to LIHPRHA.

* * * * *

—HUD should explicitly acknowledge the supremacy of USPAP. HUD should reaffirm that the principal purpose of a LIHPRHA appraisal is to find the fair market value of the housing if it were eligible to convert to its highest and best alternate use (or highest and best residential rental alternate use).

—HUD should instruct appraisers that the HUD Guidelines are advisory or clarifying only and that if, in the appraiser's judgment, the application of any HUD guideline would cause the appraiser to have to deliver something other than fair market value (as defined in the Uniform Standards of Professional Appraisal Practice—USPAP), then such guideline should be disregarded.

HUD Response: The Department does not agree with the conclusion reached in this comment that USPAP is the sole standard which may be used for LIHPRHA appraisals and that these HUD Guidelines are to be considered advisory and clarifying only.

In section 213 of LIHPRHA, Congress provides certain specific instructions for determining the preservation value of a project, including certain assumptions to be made by appraisers and the method for assessing rehabilitation needs and determining operating expenses. Subject to these special instructions, however, the section gives broad authority to the Department to establish the Appraisal Guidelines to be used under LIHPRHA, with the qualification that the Guidelines "shall not be inconsistent with customary appraisal standards."

The Department agrees with the commenter that the phrase "customary appraisal standards" in section 213 should be interpreted to mean the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP was referenced in the preamble of the proposed Appraisal Guidelines, and has been adopted, with modifications, in these final guidelines (See Section 1.C.), along with some additional, supplemental standards tailored specifically to the provisions and purposes of LIHPRHA. The commenter objects to these supplemental standards, claiming that these additional requirements will hamper the appraisers' ability to determine the fair market value of the housing and, therefore, that the supplemental standards constitute a "taking".

The Department's position in response to these comments is that USPAP provides a minimum standard to be followed by appraisers, and the Department has the authority to supplement this standard where needed. That authority resides both in provisions of section 213 and under the terms of USPAP itself. The Department's position is supported by language from the Conference Report for LIHPRHA, which states that the preservation appraisals are of a "unique nature":

> * * * Appraisers will need to make a number of special inquiries in order to determine the economic result that an owner would have received in the event of prepayment * * *. It is expected that some of these inquiries will supplement what appraisers generally consider within the context of routine real estate transactions. Senate Conference Report, Public Law 101–625, October 25, 1990, P. 462.

In addition, the Supplemental Standards of USPAP, at page 1–6, state in part that:

> Supplemental Standards applicable to appraisals prepared for specific purposes or property types may be issued by public agencies and certain client groups, e.g. regulatory agencies, eminent domain authorities, asset managers, and financial institutions. Appraisers and clients must ascertain whether any supplemental standards in addition to these Uniform Standards apply to the assignment being considered."

USPAP establishes, on page 1–6, a "Jurisdictional Exception" which permits appraisers to deviate from the standards created in USPAP where those standards are contrary to law or public policy. These provisions illustrate that USPAP contemplates that appraisers may be subject to certain statutory requirements (such as LIHPRHA) that supersede the uniform appraisal standards.

USPAP also contains a "departure" provision which permits departures from certain otherwise applicable requirements which are not listed as binding. Examination will show that there are no provisions in HUD's Appraisal Guidelines which are inconsistent with the "binding requirements" of USPAP. Wherever the final guidelines differ from otherwise applicable provisions in USPAP, they do so in a manner consistent with either USPAP's departure provision or Supplemental Standards provision.

Finally, the General Counsel of HUD, as the Designated Official under Executive 12630, Government Actions and Interference with Constitutionally Protected Property Rights, has determined that these guidelines do not have "takings implications," as defined in HUD's "Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings." This finding of the General Counsel is available for public inspection during regular business hours in the Office of General Counsel, Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

2. Owner's Option to Supply Additional Information and to Contribute Information for HUD's Unilateral Capital Needs Assessment

A number of comments were received on these issues. The following excerpts are reflective of the comments:

—Because LIHPRHA takes a conversion opportunity rather than a tangible, stable asset, the appraiser will be required to develop a scenario of the property's conversion from its current use to some other alternate use. Appraisers who overlook alternate uses may produce incorrect values, unnecessarily delay the process, or compel third appraisals, with consequent cost and delay.

—The property's owner has operated the property in its marketplace for many years, and thus has a wealth of information available which would aid HUD and HUD's appraiser. The guidelines should state that nothing prohibits that owner from voluntarily supplying HUD with any information the owner thinks relevant to an overall valuation of the property. Such voluntary submissions could include, for example, analysis of conversion opportunities, identification of possible operational upgrades, legal advice or interpretations or other supporting schedules.

If the owner supplies such information, HUD should in turn deliver it to HUD's appraiser, who would be required to consider the information.

Of course, neither HUD nor HUD's appraiser would be bound to accept the owner's analysis unless it is determined to be sound."

—The guidelines propose that HUD will make a single, unilateral determination of capital needs, including, specifically, Required Repairs and HUD Regulatory Repairs. As proposed, the owner has no right to comment on or to provide alternative evidence of necessity for or cost of capital improvements. This is significant, because there may be legitimate disagreements, not only about scope (whether a particular repair is needed), but also about cost (the optimal method and minimal cost of making such repair).

Required Repairs are a deduction from the owner's appraised value. An appraiser instructed to use a HUD-mandated list of Required Repairs that differs from the appraiser's judgment will probably have to breach USPAP to do so, and thus will be unable to complete the assignment.

To remedy this problem we propose that:

1. The owner should not be prohibited from performing its own capital needs assessment (at its own cost), and submitting the results to HUD on or before the date when the HUD capital needs assessor makes its inspection.

2. If the owner submits a capital needs assessment, HUD must take it into consideration in developing HUD's projection of capital needs.

3. The owner or the owner's capital needs assessor should have the right to comment on the HUD capital needs assessment after it has been delivered.

HUD Response: The proposed appraisal guidelines did not prohibit the owner from providing any information relevant to the issues involved. The Department has no objection to the owner's providing this information.

Additionally, the Department has no objection to appraisers, tenants, tenants' groups, or local code enforcement authorities providing whatever information they believe is relevant to the determination of the housing's value and the Capital Needs Assessment. The Final Guidelines have been modified at Section 5.B. to state that if the owner supplies information, the appraisers may consider the information, if, in their professional judgment, they believe the information affects the value of the project.

Any information received from the appraisers, tenants and tenant groups shall be treated in the same manner with respect to the Capital Needs Assessment. To maximize owner and tenant opportunity to contribute information, the owner and tenant representatives are invited to attend the physical inspection, which will be conducted by HUD. While the information received from these participants will be considered with care, HUD will not be bound to incorporate it into its analysis.

This procedure will permit all interested parties to participate in the determination of capital needs and at the same time will ensure that a single, experienced estimator provides the appraisers with a common, realistic, professional rehabilitation cost estimate. Having the Department's Architectural and Engineering staff or contractor perform the Capital Needs Assessment will also ensure that the actual rehabilitation costs that will be funded for the project do not differ markedly from those used in the appraisal stage to determine preservation value.

With regard to the optimum conversion scenario, the Department believes that the appraisers are qualified to do a Highest and Best Use study to determine what use is most profitable. However, HUD has no objection to the owner providing whatever information he or she desires to the appraisers. It is essential, however, that all the appraisers receive the same information. (Making information available to the appraisers will not cause them to breach USPAP, in view of the Supplemental Standard Provision and the right of the appraiser to discuss issues in his/her report.)

3. Capital Needs: Different Types

The National Corporation for Housing Partnerships along with other commenters including The Institute for Responsible Housing Preservation raised questions concerning HUD's treatment of the various types of capital needs which will be, or should be included, in the Appraisal Guidelines. An abbreviated characterization of these comments follows:

—At least four different types of capital needs must be assessed:

1. Upgrading Repairs. These cosmetic improvements are necessary only if the property is converted to conventional use. They will not be funded with the LIHPRHA rehabilitation loan. Examples are a new swimming pool or microwave ovens in each apartment.

2. Required Repairs. These protect the physical integrity of the property. They will be funded in the LIHPRHA rehabilitation loan. Examples are replacement of a leaking roof and correction of other deferred maintenance (such as building code violations).

3. HUD Regulatory Repairs. These repairs would not be required by the conventional marketplace but are expected to be required under HUD regulations. As such, they should not be deductions from the owner's values but will be funded in the rehab loan. Examples include HUD section 504 fair housing access, removal (rather than encasement) of asbestos, and removal (instead of encasement) of lead-based paint. Section 504 is particularly worth noting. Since it does not apply to conventional properties, the appraiser must not be required to consider it in the valuation process. Conversely, when HUD chooses to underwrite the recapitalization and consider the rehab loan, HUD is required to consider Section 504 if applicable.

4. Operational Upgrades or Energy Savers. These are sensible actions which any owner—whether the property is operated conventionally or under HUD regulations—ought to take if it wants to maximize the property's long-term value, not by increasing market rents but rather by decreasing expected future operating costs. Such operational upgrades will be considered if they have a favorable payback—that is, if the operational savings are greater than the debt service cost of the capital improvement.

Examples include:

Individual utility metering (where feasible).

Extra insulation.
Thermopane windows.
Water savers on showers and toilets.
Automatic setback thermostats.
More durable siding.

To fulfill their USPAP mandate to ascertain fair market value, both the owner's appraiser and HUD's appraiser will have to examine all possible operational improvements and energy savers.

We recommend that operational upgrades should be included in the Guidelines as a separate category, and that appraisers should be instructed to identify them and analyze their payback potential.

—We also urge HUD to encourage its field staff to include, in the rehab loan, any operational efficiencies or energy savers which, in their judgment, would more than pay for themselves through lower ongoing maintenance costs. For the appraisal guidelines, appraisers should be instructed to consider (presumably as Upgrading Repairs) any operational efficiencies or energy savers which, in their judgment, would add value to the property (net of the cost to implement them). (Problem: Neither the appraisal guidelines nor the LIHPRHA rule itself clarifies the extent to which HUD will implement Operational Upgrades or Energy Savers in the LIHPRHA rehab loan, and also the manner in which they will be considered in the appraisal. These have a definite impact on the property's fair market value.

—Another commenter also raised the issue of recognition of salvage value in the Hypothetical repairs.

HUD Response: The Department's revised position on the imposition of what are characterized as "underwriting" requirements as part of the valuation is discussed under the caption "Improper Application of Underwriting Policies in a Valuation Guideline" immediately following this HUD Response. What is classified by the commenter as "operational upgrades or energy savers" were permitted by the proposed Guidelines under Upgrading or Hypothetical repairs.

It is the Department's position that if a cost benefit analysis indicates a net positive payback to the project if these operational/energy upgrades are installed, they should be considered to be upgrading costs. Appraisers should provide data in their appraisals to support their analyses of operational/energy upgrades. HUD may allow these upgrades to be completed, and if so, their costs will be included in the calculation of extension and transfer preservation rents. The guidelines have been revised at Section 5.A. to make clear that the costs of any operational/energy upgrading should not be duplicated by being carried under both the required or operational/energy upgrade categories. HUD also has modified the guidelines to state that salvage value, if any, may be considered in the analysis of Hypothetical Repairs.

4. Improper Application of Underwriting Policies in the Valuation Guidelines.

This issue was also raised by a large number of commenters. Typical was the comment which made the following points:

—In the appraisal guidelines, HUD has sought to meld two different but related objectives: Valuation of the property to determine its Preservation Equity, and Underwriting of the projected future income and expenses to establish post-preservation rent levels and rehab loans. These objectives are similar, but fundamentally different.

In a LIHPRHA recapitalization, Valuation begins when the owner files its first Notice of Intent and ends on the value determination date (when HUD supplies the owner with Preservation Value, Preservation Equity, and so on). Underwriting begins on the value determination date and ends when the Plan of Action closes. Even though they use similar concepts, the stages are based on very different assumptions.

A. Valuation

In the Valuation stage, HUD and the owner are determining "What Could Be"—that is, what the property would be worth if it went conventional. This means that further HUD regulation ceases (except for enduring contracts such as, for example, a non-coterminous Section 8 contract,), which means all HUD-specific requirements are inapplicable. Instead, the appraiser must make a series of judgments about what would happen in the independent marketplace.

B. Underwriting

Once Valuation ends, Underwriting begins: Here HUD and the owner are determining "What Will Be"—the new pro-forma of operations when the property does not go conventional but is instead preserved.

—HUD can protect its new loans and still give owners fair value if HUD removes all the underwriting restrictions from the appraisal guidelines and relocates them into a section 241 loan processing handbook (which exists now and which HUD will have to modify to reflect LIHPRHA).

—The guidelines mandate removal of asbestos according to EPA/OSHA standards. The appraiser should be required to consider only removal, abatement, encasement or encapsulation as these would be required of a new conventional buyer acquiring the property for conventional use. Higher standards desired by HUD may be located in the section 241 handbook.

—The same comment applies to the lead-based paint removal requirements of 24 CFR 886.113. These should be considered in the appraisals only to the extent they would be imposed by the marketplace; any higher HUD standard is an underwriting criterion, rather than a valuation criterion, and should be excluded from the appraisal.

—The guidelines instruct the appraiser to consider the effect of section 504 Fair Housing requirements. Section 504 is a HUD Regulatory Repair, not a Required Repair. The appraiser should be instructed to disregard it.

—The guidelines require restoration to original condition, but fail to clarify difference in building codes between the time of original construction and now.

—In general, in the valuation phase the appraiser should be instructed to consider only those renovations which would be required if the property changed hands and was converted to a different, higher use. (Thus, the local code requirements may vary according to the appraiser's chosen alternate use and related level of Upgrading Repairs.) If the level of repairs funded by the rehab loan is different, the local requirements triggered should be considered only in the underwriting phase and addressed in the section 241 handbook, not the appraisal guidelines. (Problem. No definition is given of 'original condition,' which leaves open the possibilities of overstating capital needs, for instance by requiring a functional roof to be replaced before it has expired.

—The appraiser should be required to consider only those improvements that would be reasonably required by a buyer who intended to convert the property to conventional use. Any improvements beyond this level should be considered HUD Regulatory Repairs, rather than Required Repairs, and handled in the section 241 handbook.

—The guidelines require the appraiser to assume that the property is restored to

original condition and meets Housing Quality Standards (HQS) under 24 CFR 886.113. These are HUD, not market requirements. HQS is not required in the conventional marketplace, and hence should not be included in valuation. Instead, HQS standards should be relocated to the section 241 handbook.

HUD Response: In response to the above-summarized comments, the Department has reconsidered its position on the Underwriting/Valuation issue. The guidelines have been revised to indicate that the following will now be under HUD Regulatory Repair Requirements, and will not be considered as part of the valuation process, unless these HUD program/regulatory requirements are also local code requirements, local appraisal practice, or necessary for the subject project to be marketed conventionally.

A. HUD Regulatory Repairs

Include lead-based paint mitigation, asbestos mitigation, and section 504 Accessibility.

These HUD regulatory repair requirements will be included in the calculation of Extension or Transfer Preservation Rents. (See Section 5.C. of the Guidelines.)

B. Required Repairs to Bring Property Back to Its Original Physical Standards for Occupancy

The Guidelines also have been revised to state that HUD will furnish both appraisers with the list of required repairs and their cost, assuming that Davis-Bacon wage requirements do not apply. As stated in the Guidelines, the repairs are to bring the property up to a "good condition"—not necessarily new or original physical condition. Additionally, the repairs are to meet local codes or the Housing Quality Standards, whichever is higher, as outlined in 24 CFR 886.307, except the lead-based paint requirement or other requirements not customary in the subject marketplace.

The appraisers also will indicate what operational upgrades/energy saving measures should be employed in their analyses of the Upgrades repairs. However, the HUD Architectural and Engineering staff or contractor will only provide appraisers those repairs that will be reasonably completed by a buyer, in light of the above, who intended to rehabilitate the property without adding any upgrades. Any improvement beyond this level will be considered HUD Regulatory Repairs rather than Required Repairs. (See Section 5.B of the guidelines.)

To attract a market rate rental occupancy or conversion to a higher residential use, the property will have to be brought up to at least a good condition before one considers what upgrading repairs should be done. If the amount of required repairs does not bring the property to good condition an important element of the conversion process was not fully considered. The appraiser is responsible for taking into account such repairs. This does not mean, however, as one commenter suggested, to indicate that if the roof has, say four years physical life remaining, that it should be replaced and made part of the repair requirement. Appraisal principles assume that the aged roof in addition to other such items of remaining short term life would have a depressing effect on the remaining economic life of the property, thus affecting "AS–IS" Value. The final Guidelines reflect this position of the Department.

C. Ninety-Three Percent Occupancy

The proposed Appraisal Guidelines instructed appraisers to use a market-derived occupancy rate which does not exceed 93 percent. The final Guidelines eliminate this "directed" 93 percent occupancy cap in connection with the appraisal. Accordingly, the appraisers will not be restricted as to a specific occupancy percentage, so long as the occupancy percentage used by the appraisers is documented by market data and based on a typical long-term operation, rather than a first year operation.

It should be noted that the definition of an occupancy percentage or rate, as stated in American Institute of Real Estate Appraisers' (AIREA) "Dictionary of Real Estate Appraisal", Second Edition, reads: "The relationship between the *income received* from the rental units in a property and the *income that would be received if all the units were occupied*" (Emphasis supplied). As the definition indicates, the occupancy rate used in processing is intended to reflect not only physical vacancies in the project, but also bad debt and collection costs. The Department has found from experience that, as a general matter, a long term occupancy rate of 93 percent is appropriate (i.e. 5 percent vacancy plus 2 percent bad debt and collection loss).

If the occupancy factor used exceeds 93 percent, HUD valuation reviewers will expect to find, in the expense estimate, a reasonable amount specified for bad debt and collection loss. Further, the gross rents used shall have a proper, supportable relationship to the vacancy/collection loss used in the appraisal.

5. The Three-Year Operating Expense Test

This is another issue raised frequently by the commenters. Typical was the following:

—Under section 213(c) of LIHPRHA, the appraiser is directed "* * * [T]o use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual operating expenses during the preceding three years) or projected operating expenses after conversion." Yet the very next sentence states that the appraisal Guidelines "shall not be inconsistent with customary appraisal standards." HUD's regulations must reconcile these two Congressional mandates in some internally consistent manner.

—Under USPAP, the appraiser is directed to establish realistic operating expenses based on conversion; for existing properties, appraisers will as a matter of course consult the historical record and will make adjustments only where persuasive evidence justifies a change. This will occur for renovation, energy efficiencies, and also for changing operations that result from a change in use. In a LIHPRHA context, changes in use involve not only a change in residents, but also a change in regulatory framework. For example, HUD reporting requirements are much more extensive than marketplace requirements, so HUD administrative costs and management fees, while appropriate for management-intensive HUD affordable housing properties, are usually higher than would be incurred by comparable conventional properties.

We thus conclude that the three-year test should be interpreted so as to permit the appraiser to identify the real future operating expenses, while at the same time reconciling these to the historical operating costs. In its proposed guidelines, HUD has interpreted the statutory language in this manner, as follows:

Conversely, if the most recent year reflects lower expenses and the appraiser expects the expenses not to increase either due to energy efficiencies or rehabilitation, the most recent year expenses will be used * * *. The actual project operating expenses should be reviewed carefully to eliminate *extraordinary and nonrecurring expenses.* Items which are extraordinarily low or high should also be identified. (Emphasis added.)

The property may currently incur some expenses which it would not incur

if it were conventional. As mentioned above, a good example of costs that would terminate upon conversion are the administrative expenses of complying with HUD regulations (the certifications, the subsidy notices and so on). These costs are incurred now and will be incurred in the future, but would not be incurred if the property were conventionally operated. HUD can correct this problem by changing the italicized language to read "expenses which are extraordinary, non-recurring, or which would not be incurred if the property were converted to its alternate use as determined by the appraiser."

HUD Response: The Department concurs in this comment and believes it has authority under LIHPRHA to revise its Guidelines accordingly. These final Guidelines have therefore been revised, at Section 5.E., to allow appraisers to treat as non-recurring expense those costs (such as the administrative costs of complying with HUD regulations) which would terminate upon conversion to a non-subsidized project.

Also, as a general matter it should be noted that LIHPRHA requires that the operating expense estimate shall be the greater of the last three years' actual operating expenses or the estimated operating expenses after conversion. However, the interim rule also states that the most recent year should be used instead of the average of the three years, if the current year operating expenses are higher than those of the preceding three years and the appraiser has made a determination, subject to the Commissioner's review and approval, that these costs are unlikely to decrease in the future. This most recent year should be used in comparison with the estimated operating expenses after conversion. Conversely, if the current year operating expenses are lower than those of the preceding years and the Commissioner has made a determination that these costs are unlikely to increase in the future, the appraiser shall use current year operating expenses, rather than operating expenses for the preceding three years, for purposes of comparison with the estimated operating expenses after conversion. In both of the above cases, the Commissioner has determined that the appraiser will make the initial determinations regarding which expense to use (current year or average) in comparison to estimated operating expenses after conversion and the Commissioner, in the appraisal review process, will make the final determination and will request revisions to the appraisals, if necessary.

6. Failure to Adjust Appraised Value for Timing Differences.

The National Corporation for Housing Partnerships noted that:

—The guidelines provide that the appraisal will be as of its date of delivery, yet the property will not be taken to closing until many months later. If not corrected, this would create a taking of the time value of money—in this case, the time value of the Preservation Equity for the period between the appraisal date and the owner's receipt of incentives.

To prevent this inherent taking, we recommend that HUD provide, as part of the Plan of Action, that the Preservation Equity will be adjusted by a reasonable interest rate for the time between the value determination date and the recapitalization closing. (The Federal Cost Limit test would be applied on the valuation date, and not revisited.) Alternatively, the appraisal guidelines should be corrected to provide that the valuations are as of a projected future Plan of Action closing date (usually somewhere between 6 and 18 months hence), but that involves estimation and is less precise than simply paying interest on the taken value. Paying interest is also consistent with eminent domain awards, which accrue interest for the interval between the condemnation and the transfer of title.

HUD Response: This issue is one that was also raised by commenters on § 248.111 of the proposed rule amending 24 CFR part 248. The Department's response to these comments is similar to that set out in the preamble to the interim rule published at 57 FR 11994, 12005, April 8, 1992:

Section 213(a)(3) of the statute provides that the Secretary may approve an "extension" or "transfer" plan of action to receive incentives only based upon an appraisal that is not more than 30 months old.

The Department recognizes the commenters' concerns that property value during this 30-month period may fluctuate, but HUD has been unable to formulate a workable and statutorily permissible mechanism to alleviate this problem. Preservation values drive the preservation process from the start. The resulting aggregate preservation rents are compared to the Federal cost limit to provide project-specific information to owners on their options.

The property may be offered for sale for up to 15 months, and potential purchasers are informed of available assistance based on the preservation value and Federal cost limit. Re-estimating value late in the process would change the ground rules for all parties concerned, and would unnecessarily lengthen the process.

Adjusting preservation value would mean adjusting aggregate preservation rents and re-comparing them to the Federal cost limit—which would have changed since the original analysis. Moreover, property values are not subject to simple inflation factors that could be applied to all properties. An attempt to reach agreement on revaluation might require multiple appraisals.

Finally, the Department believes that the language of section 213(a)(3) implies an assumption on the part of the Congress that no readjustment of preservation values is warranted, as long as the plan of action is approved within 30 months from the date of the appraisal.

7. Effective Date of Appraisal Guidelines

—Commenters expressed concern that the guidelines do not state whether they are effective upon publication, or only upon revision after comments.

HUD Response: Today's document—the final appraisal guidelines, will become effective upon publication, at the same time that HUD's interim Prepayment rule, FR–2978, 24 CFR part 248, becomes effective.

8. Reconciliation of Two Appraisals

—A number of commenters were concerned that the five percent spread between the first two appraisals is too narrow and will result in too large a number of third appraisals. A spread of up to 25 percent was suggested.

HUD Response: The Department has considered the many comments received to the effect that the five percent difference in the values produced by the owner's appraiser and the Department's is too narrow and will cause an inordinate number of third appraisals. The Department has chosen the five percent figure to encourage the independent appraisers to produce fair and realistic values. Further, the Department's administrative instructions will allow an owner to proceed with the next steps in the preservation process even if one of the preservation values cannot be reconciled within five percent of the lower of (A) one hundred five percent of HUD's value or (B) owner's value.

9. Impact of Non–Coterminous Subsidy Contracts

—Commenters cited the following problem: Since LIHPRHA is a valuation of the owner's conversion right under the existing mortgage, only

those contracts that are directly linked to the existence of the mortgage would terminate upon prepayment. For example, a section 236 interest reduction subsidy contract explicitly expires when the mortgage is repaid. By contrast, many forms of section 8 assistance have been awarded for multi-year terms which may, more than likely, not coincide with the prepayment eligibility date.

These contracts must be considered, as they represent continuing commitments—on both the owner's and HUD's part—which would not terminate simply because the mortgage was prepaid. At the same time, many of these contracts provide for adjustments in the section 8 rent—for example, section 8 property-based certificates will often provide that they bestow rent equal to the lesser of the Section 8 Existing Fair Market Rent (FMR) or the property's budget-based rent. If the mortgage were prepaid, these rents would rise.

—Commenters also suggested that the guidelines should state that 'stub' contracts which survive prepayment must be considered as a transition period cost or benefit, and that the appraiser should be alert to the possibility that the contract rents would change.

HUD Response: The Department agrees with these commenters. The proposed guidelines, at Section 5.D.1(d), recognized that Section 8 Contracts are awarded for a multi-year time period, and would not necessarily expire upon prepayment of the mortgage or termination of the mortgage insurance contract. The Department believes that any Section 8 Rents that survive prepayment can be properly assessed by the appraisers who are given data on the number of units receiving section 8, the length of the contract, and the typical annual adjustments for the last few years. For further clarification, HUD is indicating in the final guidelines that this data is obtainable from the owner or the local HUD Field Office. Since these guidelines require the first year's rents to reflect a typical stabilized long term operation, the appraiser should use unsubsidized market rents and subtract any income loss due to the lesser contract rents from the unsubsidized value as part of the conversion costs.

10. Impact of Transition and Conversion Costs

Commenters raised the following problem: The guidelines state that the extension preservation value is "as is", and that it is the "fair market value as residential rental housing less all repair and conversion costs needed to achieve the net income used in the analysis." (Similar language is used in the succeeding paragraph relating to transfer preservation value.) In point of fact, fair market value reflects all costs of conversion; the language used creates the impression of a double debit.

Commenters suggested the following change in the language:

[F]air market value as is, which reflects not only property's alternate value after conversion to a higher and better alternate use but also the conversion and transition costs required to achieve that alternative use.

It was suggested that the language could also go on to say, for clarity, that 'The Department expects that appraisers will determine fair market value as-is by developing an estimate of the property's stabilized future value, after conversion, and then deducting all transition and conversion costs from that future value and, if necessary, discounting these costs and values to present value to reflect the transition period over which the hypothetical conversion would occur.'

HUD Response: The Guidelines were not intended to imply that repairs and conversion costs were to be deducted twice in the determination of Fair Market Value "As-Is" of the properties. The final guidelines have been clarified on this point. HUD has incorporated into the guidelines the language of the commenter as follows: Fair market value "AS–IS", which reflects not only the property's value after conversion to a higher or better alternate use but also the conversion and transition costs required to achieve that use. The Department expects that appraisers will determine fair market value AS–IS by developing an estimate of the property's stabilized value, after conversion, and then deducting all transition and conversion costs from that value. (See Sections 3.A. and B. of the guidelines.)

11. Appraisers' Opportunity to Revise Appraisals

—Commenters stated that the proposed guidelines did not provide for the two appraisers to have an opportunity to revise or reconcile their values, as mandated by section 213(c) of LIHPRHA. The Guidelines, the commenters suggested, should state that in the month between delivery of the two appraisals and the engagement of the third appraiser, the two appraisers shall meet, review each other's work, discuss the differences in assumptions or judgments, and (if appropriate) issue revised appraisals. The owner and HUD should then seek to reconcile the two revised appraisals.

HUD Response: The guidelines state that when the appraisers have completed their appraisals, they will be examined by both HUD and the owner to insure that the guidelines have been followed and that all pertinent data has been considered and properly applied in both appraisals. HUD does not believe it appropriate for the appraisers to review each other's appraisals before the owner and HUD examine them. We are confident that both HUD and the owner are capable of recognizing cases where the appraisal reports that are not adequately supported or are in conflict with the guidelines. The appraisers will then have an opportunity to amend their appraisals. Once the appraisals have been reviewed and, if necessary, amended by the appraisers, HUD and the owner will attempt to reach a reconciliation of the value amounts. If that is not possible within a 5 percent leeway, a third appraisal, binding on both parties, will be performed.

12. Delivery of Third Appraisal and Deficiencies in Third Appraisal

—Commenters raised another problem: The guidelines place no bounds upon the third appraiser's choice of methods or values. It was recommended that the third appraiser be directed to review the two appraisals and to provide an opinion of value within the range established by the two values. Although this procedure is not statutorily mandated, commenters stated their belief that it is consistent with Congressional intent, which was to seek a third appraisal only to reconcile the differences between the two points of view.

—Additionally, commenters observed that the proposed guidelines stated that the third appraisal is "binding on both HUD and the owner as long as there are *no inconsistencies or other deficiencies.*" (Emphasis added by commenter.) The italicized language is contrary to the plain language of the statute. Nor is there any statement [in the proposed guidelines] as to how deficiencies are determined. It was recommended that the quoted phrase be replaced with binding on both HUD and the owner as long as it conforms with the Uniform Standards of Professional Appraisal Practice (USPAP), as supplemented by these appraisal guidelines.

HUD Response: The Department has determined that the third appraiser shall conduct an independent third appraisal

of the property, using the same information, and subject to the same guidelines, as the first two appraisers. As long as the third appraiser has followed the guidelines and their intent, supports his/her value estimates with data, and there are no other errors (mathematical or procedural, etc.), the third appraisal will be binding on both parties—that is, HUD and the owner. The qualification that the third appraisal is binding as long as there are no inconsistencies or other deficiencies is not contrary to the statutory language. It is merely a logical extension of the statutory intent that all three appraisals be consistent with the guidelines promulgated by the Secretary. If the third appraisal fails to be consistent with the guidelines, or is deficient in that respect, to require that appraisal to be binding upon the parties would be contrary to the statutory intent.

The third appraisal will be subject to the same examination as the first two appraisals. Review of the legislation and its history indicates that the third appraisal would be used to resolve the differences between the first two appraisals. However, this does not mean that the third appraisal must establish a value between the estimates of the first two appraisals, or that the third appraisal should merely consist of a review of the first two appraisals by the third appraiser. The third appraiser must establish a value independent of the first two appraisals in order to serve his or her role as the final arbiter of the "AS–IS" Value of the housing. If the third appraiser was limited to determining value somewhere within the range established by the first two appraisals, as suggested by a commenter, this would raise questions concerning conformity to USPAP. Additionally, limiting the role of the third appraiser to merely reviewing and reconciling the difference between the first two appraisals would contradict section 213(a)(1) of LIHPRHA, which clearly requires the third appraiser to conduct his or her own appraisal of the housing, not just review appraisals that have already been performed.

13. Interpretation of Use Restrictions

—A commenter outlined the following problem: The guidelines instruct the appraiser to take certain peripheral legal restrictions into consideration and thus ask the appraiser to perform analysis for which the appraiser is not qualified. The commenter suggested that the guidelines instruct the appraiser to seek advice from the owner's legal counsel as to whether:

1. Any non-Federal use agreements exist.

2. If so, what their impact would be on the subject property if it were to prepay its mortgage and convert to conventional use.

The guidelines should further instruct appraisers, the commenter said, that they may rely on advice of counsel, provided that the appraiser's reliance is appropriately highlighted as an assumption or limiting condition, and if necessary, the appraiser should attach the advice as an exhibit or supplementary schedule to the appraisal.

HUD Response: It is the position of the Department that it is the appraiser's responsibility to consider all factors that could have an effect on value. If the appraiser has any question as to the applicability of use restrictions on a particular project, the appraiser should submit the questions to the HUD Field Office in the area where the property is located. The Appraisal Guidelines have been revised at Section 4.A. to so state.

14. Preemption of Certain Local Rent Control Laws

—A commenter observed that the proposed guidelines failed to note the preemption provisions of section 232(a) of LIHPRHA, which provides, in pertinent part, that:

'(a) IN GENERAL. No state or political subdivision of a state may establish, continue in effect, or enforce any law or regulation that—:

(1) restricts or inhibits the prepayment of any [LIHPRHA-eligible] mortgage;

* * * * *

(3) is inconsistent with any provision of this subtitle [LIHPREA] * * * or

(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage * * *.'

It was suggested by the commenter that the guidelines be supplemented by quoting section 232(a) of LIHPRHA verbatim, together with the amplification contained in § 248.143 of the LIHPRHA regulations (and the related preamble discussion), which provides that:

'[A] state or local law which is more onerous to eligible low-income housing than to other projects would clearly be preempted by the Department.'

Appraisers should be advised, the commenter said, that state and local laws not of general applicability, or which are discriminatory in their application to existing affordable housing, are preempted and thus must be ignored for purposes of a LIHPRHA valuation.

As with other legal use restrictions, the evaluation of rent control and similar ordinances is a legal matter for which appraisers are generally unqualified, the commenter claimed. Appraisers should be directed to rely upon advice of suitable legal counsel. In jurisdictions with general rent control that went into effect on a certain date, the subject property may well be exempt because it was constructed before the effective date. The Guidelines should so state, the commenter said. Interpretations of local rent control laws which have the effect of forcing prepayment-eligible properties to accept new 'market' rents which are a continuation of their restricted HUD rents (1) would also be considered more onerous to eligible low-income housing, (2) are therefore preempted by LIHPRHA, and (3) should be disregarded by appraisers in establishing Preservation Value.

HUD Response: The Department agrees with the commenters that appraisers should be aware that LIHPRHA preempts certain State and local laws which conflict with LIHPRHA. In furtherance of this, Section 4.C. of the Appraisal Guidelines has been revised to add the statutory language of section 232 of LIHPRHA, and to refer the appraisers to the preambles of the proposed rule amending 24 CFR part 248 (56 FR 20262, May 2, 1991) and to the part 248 interim rule at 57 FR 11992, published on April 8, 1992, both of which discuss this issue in greater detail.

The Appraisal Guidelines have also been amended to direct appraisers to submit any questions regarding the preemption of specific State or local laws to HUD Field Office counsel. Field counsel will provide the appraisers with written responses which should be incorporated as part of the appraisal reports submitted to HUD and to the owner.

With reference to the specific issue of rent control, section 232(b) of LIHPRHA states that rent control laws are not preempted if they are consistent with LIHPRHA and are of general applicability. Therefore, the issue of preemption should not arise very frequently in the context of laws controlling rents. If the issue does arise, the appraisers should refer the question to Field counsel.

The Department disagrees with the comment that the determination whether a rent control law applies to a particular property is a legal issue that appraisers are unqualified to resolve. The applicability of local laws and other use restrictions to a particular property is a determination which should be made by the appraisers. Standards Rule

1–2(c) of USPAP specifically states that in developing an appraisal, appraisers must "consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature."

Rent control laws are included in these considerations. Accordingly, it is the appraiser's responsibility to determine whether any of the foregoing apply to the particular property being appraised. The appraisers' determinations should be documented in their reports.

15. Improvements and Property Cash Reserves

—Commenters noted that the proposed guidelines instructed the appraiser to deduct various capital needs expenditures, but failed to note the presence of the replacement reserve and residual receipts account. Both of these are the owner's money that (in the case of a prepayment) would be available to offset those costs.

The guidelines should instruct the appraiser, the commenters said, that to the extent the appraiser determines that in order to achieve a higher and better use, the owner would be required to expend capital improvements, transition costs, or relocation benefits, the appraiser should net against these conversion costs the balance in the replacement reserve (because that money would be immediately available to fund them).

A similar argument applies, even more strongly, to residual receipts. These are clearly the owner's money. They would become available upon prepayment of the mortgage, with no further conditions. The residual receipts should be netted against the projected capital improvements costs, transition costs, or relocation benefits.

HUD Response: The Department disagrees with this proposal. As noted by the Appraisal Institute in its comments on these guidelines, "The reserve account itself is a cash fund; however, it is not a part of the realty but an item of personalty and, therefore, should not be included in the appraisal analysis". The same response is also applicable to the residual receipts account. Since in the event of prepayment, an owner is not required to expend such funds to improve the project, the appraiser should not assume that the fund will be used for that purpose.

16. Conversion Period Costs

—Commenters observed that the guidelines list conversion factors which must be documented. This creates the impression, it was claimed, that these conversion factors are mandatory.

The guidelines should also state that the list of conversion costs provided in Section 5.C.2 is intended to be advisory and should list factors that the appraiser may or may not deem relevant or necessary. The guidelines should state that no implication is to be inferred that any or all of these costs are mandatory, but rather that each one must be reviewed by the appraiser and included only to the extent that the appraiser believes the cost would be required in the marketplace. (The guidelines may also require the appraiser to state, for any conversion cost deemed unnecessary, why the appraiser believes it inapplicable.)

HUD Response: The comment correctly outlines the Department position on this matter, and the suggested language has been incorporated in these final Guidelines. (See Section 5.D.1 and 2 of the Guidelines.)

17. Increased Maintenance/Tenant Complaints

—Commenters stated that the guidelines instruct the appraiser to consider 'Increased maintenance and repair costs under the assumption that increased tenant concern, complaints and loss of goodwill will occur.'

—The language is unclear, commenters claimed. Are the guidelines suggesting that the appraiser must consider increased vandalism? It was recommended that the section be deleted.

HUD Response: The Appraisal Guidelines have been revised to eliminate the above reference in Section 5.D.2.(d). It is the appraiser's function to determine what is applicable or not in the analysis. (See also HUD's response under "Conversion Period Costs, elsewhere in this preamble.)

18. Financing Costs

—Commenters observed that the proposed guidelines instruct the appraiser to consider financing costs, which, the commenters claimed, are not part of the value of property. The guidelines should state instead that: 'The appraiser is directed to consider that, as a precondition to converting the housing to an alternate use, the owner must first prepay the existing HUD mortgage. Thus the fair market value determined by the appraiser may not consider any favorable HUD financing now in place.'

To the extent that costs of raising future capital to buy properties are a part of a buyer's decision process, the market-derived NOI capitalization rate reflects these costs. Including them separately is a double count that would unfairly penalize owners.

HUD Response: The Department believes that the above comment reflects a misunderstanding of the guidelines that may have been the result of an assumption that a Discounted Cash Flow technique would be used. It should be noted that the guidelines assume application of a capitalization rate to an income stream that represents a stabilized typical long-term operation which begins on the effective date of the appraisal. The "Financing Costs" referred to in the guidelines are intended to reflect such costs as application fee, appraisal fee, credit checks, placement fee, etc. associated with any mortgage that the appraiser might have assumed in the capitalization rate to arrive at the unsubsidized market value.

The appraisers must identify and discuss "Financing Costs" in enough detail to permit the review appraiser and other users of the report to determine that these financing costs have been considered adequately.

19. Replacement Reserve Sinking Fund and Replacement Reserve Funding

—The guidelines instruct the appraiser, a commenter observed, to estimate an initial deposit to the Replacement Reserve for future capital needs. This is not mandated by USPAP and only sometimes by a particular property in a particular marketplace. The guidelines instruct the appraiser to use the current HUD reserve funding, as increased by 0.6% of the hard cost any new repairs.

These concerns, to the extent deemed valid by the appraiser, should be reflected by the appraiser in its projection of future operations and should not be separately considered. This section should be deleted. Determination of suitable future conventional replacement reserve deposits—if any—should be left to the appraiser based on market conditions.

HUD Response: The Department agrees with the comment regarding the initial deposit to reserve, since the "AS–IS VALUE" implies that portions of the short-lived items have already been considered in the "AS–IS" Value. The guidelines have been revised to eliminate any requirement for an initial deposit to the reserve account unless it is customary to have such a Reserve for Replacement.

With respect to the inclusion of an annual deposit to the Reserve for Replacement in the expense estimate,

the guidelines have been revised to indicate that it is the appraiser's decision as to the appropriateness of including a Reserve for Replacement payment when determining the proposed operating expenses after conversion.

20. Entrepreneurial Profit and Risk

—A commenter noted that the proposed guidelines instructed the appraiser to consider entrepreneurial profit and risk. This is a HUD underwriting concept, the commenter said. In conventional appraisals, entrepreneurial profit (to the extent the appraiser deems it relevant) is captured within the market-derived capitalization rate. The reference should be deleted or made advisory by adding the language, "if the appraiser deems entrepreneurial profit to be appropriate."

HUD Response: The Department accepts the comment that entrepreneurial profit should be reflected in the market-derived capitalization rate, and has deleted its mention in connection with conversion costs under Sections 5.D.2(h) and 6. of the final Appraisal Guidelines. The guidelines have also been revised to reflect risk and profit in the capitalization rate. (See also the following discussion on capitalization rates.)

21. Capitalization Rates

—A commenter noted that the guidelines require the appraiser to base the capitalization rate on market data. It will present problems to appraisers, the commenter said, because deriving accurate data from which to infer capitalization rate is difficult in many markets where sales data may be known, but reliable operating income data is harder to obtain. To prevent appraisers from using unjustifiable capitalization rates, HUD could state that the appraiser must research capitalization rates based on market evidence, must supply such market evidence, and must explain how the chosen capitalization rate was reconciled with the market evidence. HUD could also require a market comparison of cap rates as a supplementary schedule.

HUD Response: The fact that the appraisers base the capitalization rate on market data, as stated in the comments, and that this may present problems to the appraisers in deriving accurate data does not negate the need for this data. In fact, this consideration is inherent in the appraisal process. The documentation referred to in the comment is a long-existing requirement, and is required by USPAP and by HUD's supplemental standards.

A capitalization rate based on market data is required. The capitalization rate should reflect conventional market loan/equity ratios, debt service rates, and equity dividend rates. A clarification has been added in these final guidelines with respect to treatment of equity dividend rates

Equity dividend rate data extracted from comparable unsubsidized properties that do not need conversion reflects the return on investment associated with the transfer of a property not requiring the additional effort and risk a conversion from a subsidized to an unsubsidized status entails. Accordingly, an additional entrepreneurial return (perhaps 10 to 20 percent based on market analysis) associated with conversion may be added to the equity dividend rate extracted from market comparables not requiring repairs and conversion. Of course, if the comparables were properties that would require the same repair and conversion effort as the subject, such an adjustment would not be applicable. As noted, in either case, this must be fully documented in the report. As noted, the Guidelines have been modified to reflect the above.

22. Effective Gross Income Multiplier (EGIM)

—Effective Gross Income Multiplier (EGIM) is mandated as an approach to value, a commenter stated. EGIM is not an approach to value; it is a technique used by appraisers as part of the income approach to value, just as NOI capitalization is another technique used. The guidelines should clarify that EGIM is a technique in the income approach, and may mandate an EGIM analysis as a supplementary schedule.

HUD Response: The classification of GIM or EGIM is considered to be a moot point. As one of HUD's Supplemental Standards, the guidelines in essence, simply require that one of these (i.e. GIM or EGIM) must be used in addition to the Market approach.

23. Prohibition on Discounted Cash Flow

—A commenter stated that the proposed guidelines prohibited appraisers from using Discounted Cash Flow (DCF) as a valuation approach, but specifically invited public comment on the point. DCF is the most useful tool available for any property which is being valued before or during a transition from one stable state to another, and is specifically permitted by USPAP. To prohibit it denies appraisers their best method for estimating value in complex properties such as these, the commenter said.

Given that HUD has (correctly) instructed appraisers to consider the burdens and benefits of non-coterminous "stub" period subsidy contracts, there is almost no mathematical way accurately to reflect these burdens and benefits in a pure NOI capitalization rate. A DCF approach is almost the only way to provide any rigor to the assessment of the value or cost of these stub-period contracts. DCF analysis is vulnerable to unverifiable assumptions about future inflation rates only if the projected DCF holding period is long.

As a compromise, HUD should instruct appraisers that it will accept DCF analysis so long as:

1. The DCF period is no longer than the transition period (from the current subsidized operations to the completion of the conversion to the higher alternative use), and in general not expected to be more than five years.

2. The derivation of the income approach to value in the future stable state does not rely exclusively on future DCF but instead on NOI capitalization, GIM, or EGIM.

3. The total present value would be the discount future stabilized value, plus the sum of all transition period interim income.

This method would allow for explicit consideration of transition and conversion costs, as mandated by both LIHPRHA and USPAP. The Appraisal Guidelines for Extension Preservation Value, in order to accomplish the physical transformation from the existing low income housing use to market rate housing, need to indicate that significant upgrades and renovation are necessary. In addition, many tenants will be displaced and vacancy increased during the period of transformation. As a result the income stream will be significantly less than the "stabilized" income stream that will be produced after renovation has been completed and absorption of vacant units has been accomplished. Further, if the appraiser is forced by the Guidelines to capitalize into perpetuity the first-year income stream, the property would be unfairly penalized in the final value estimation.

—Abuse of the discounted cash flow tool is a well known reality in the appraisal profession. A difference of opinion where one appraiser can claim a 20 percent per year increase

and another a 5 percent per year increase can never be unequivocally settled until that holding period has passed, and historical fact can be used to test these projections. However, for Transfer Preservation Value, in a case where the highest and best use for Transfer Preservation Value is conversion of the property to condominium units, an analysis of the discounted cash flow from anticipated sales of condominium units each year, after deducting all costs such as marketing, management, utilities and other expenses of vacant units, over a specified period of time, would be the most applicable appraisal tool for this purpose.

HUD Response: With respect to appraisal of multifamily rental properties, the Department believes that the projections of change each year in the estimates of income, occupancy, expense, and net operating income over an extended holding period to be too uncertain. The last year's net operating income (which has been greatly expanded by the projections) is then capitalized (usually with an overall rate) into a disposition price for the property and the profit from this sale is included in the net operating income for that year. The income from each year is then discounted back to its present value at an appropriate interest or discount rate so that the income from that year contributes to the total present value only the discounted amount.

It is not the mathematics of the discounting process to which the Department objects, but the extensive period of time over which projections are made and the projections, per se, give us concern. If the original estimates of income and expenses, as of the date of the appraisal, are properly based on comparable data they may be very good, but the projections for each successive year's income and expense over the holding period are much less likely to be accurate enough to include the profit from a sale price in the last year, so that the discounted amount of returns from each year of the holding period may be relied on to indicate a value which will meet a criteria of soundness.

If the appraiser estimates a yearly increase of five percent in income and expenses for a ten-year holding period, the payments on the mortgage permitted by this discounted cash flow valuation can be substantially more than the net operating income of the property, as found in the original comparable data. This is not acceptable to the Department because it results in a present value of the property that is greater than can be supported by the current income based on comparable properties at date of appraisal.

In reply to the comment concerning the use of first-year income, we wish to emphasize that the first-year income stream and occupancy would not be used. Instead, the Guidelines require that the rents shown by the data to be currently obtainable would be multiplied by a stabilized occupancy rate which is expected to follow the period of tenant transformation. Thus, the value found for the Extension Preservation Value (before deductions) would reflect a stabilized occupancy rate of, perhaps, 93 percent.

However, to get the "as is" present value of the property for this market rental property use, several items must be subtracted. One of these items is the loss of rental income below the stabilized occupancy rate during the period of tenant transition. The total costs of the conversion period shall be discounted at a discount rate equal to the local prevailing interest rate on savings accounts in depository institutions, and payments from these discounted conversion costs shall be assumed to be made at least annually, or more frequently, when computing the discounted present value of conversion costs. The Department considers this rate reasonable and realistic in view of the need for the ready availability of these funds.

The Department agrees with the comment concerning conversion to condominium units. Accordingly, the guidelines have been revised to provide that the discounting technique may be used to value Transfer Preservation Value as a condominium, where there is a market for condominium units and the value of the subject condominium units is supported by comparable condominium unit sales, less all costs and expenses, to be made each year over a selling period not to exceed two or three years.

As discussed under the non-coterminous contract response elsewhere in this document, the dollar amounts reflecting the present value of monies to be lost or received at a future day may be subtracted as a conversion period cost.

24. Relevant Local Market Study

—A commenter remarked that the proposed guidelines were not entirely clear regarding the purpose of the relevant local market study. The guidelines should state, the commenter said, that the relevant local market study is conducted by HUD's appraisers as a USPAP supplementary schedule that is provided solely for the purpose of the Federal Cost Limit test, and that the two appraisers, for valuation purposes, should use whatever comparables and whatever similar markets their professional judgment leads them to conclude are appropriate.

HUD Response: The comment coincides with the Department's position. The Appraisal Guidelines have been clarified, at Section 7., to state that position.

Additional Changes in Final Appraisal Guidelines not Described in the HUD Responses to Public Comments

In addition to the revisions to the earlier guidelines already noted as part of HUD responses to public comments, the Department has independently reassessed its original draft and is making the following revisions in this final draft:

1. Section 5.F.(3) of the final guidelines sets out a "Summation Approach" to determining value which may be used in addition to the other approaches outlined where the appraiser considers it to be appropriate.

2. Section 5.F.(4) provides that, in the correlation of value, any undepreciated summation approach shall serve only as a final upper limit to the correlated value.

Procedural Matters

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this issuance 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. The guidelines would be used as an adjunct to regulations implementing the Low Income Housing and Resident Homeownership Act of 1990—legislation designed to preserve and enhance housing opportunities for lower income families.

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 these guidelines will not have federalism implications when implemented and, thus, are not subject to review under the Order. These guidelines do not change in any way existing relationships between HUD, the States, or local governments.

Semiannual Agenda

This document was listed as item number 1411 on the Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53410).

Accordingly, final guidelines for Determining Appraisals of Preservation Value Under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 are published immediately following this Notice.

Dated May 1, 1992.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appraisal Guidelines Low Income Housing Preservation and Resident Homeownership Act of 1990

1. Overview

A. Background

In the late 1960s and early 1970s, several thousand low-income multifamily projects were built with mortgages insured or assisted under sections 221(d)(3) and 236 of the National Housing Act. Over the next 15 years, limited dividend sponsors of 360,000 units of this housing stock will become eligible to prepay their mortgage loans and convert their properties to market rate housing or other purposes. This eligibility stems from the terms of the mortgage note signed at the loan closing, and the applicable program regulations in effect at the time the properties were built. Owners were allowed to prepay their 40-year mortgages without HUD's consent after 20 years. The majority of the eligible projects were built in the early 1970s, so most of the 20-year prepayment prohibition terms will be expiring in the near future.

Considerable concern has been raised about owners exercising their option to prepay the mortgages because this action has the effect of terminating the HUD-imposed affordability restrictions which ensure that the project is maintained for very low, low- and moderate-income tenants. In response to this concern, Congress enacted legislation in 1987 that placed constraints on an owner's right of prepayment and created incentives to encourage owners either to retain the low-income affordability restrictions in exchange for receiving a greater return on their investment, or to transfer the property to purchasers who would agree to retain the low-income affordability restrictions.

The 1987 legislation was intended to be a temporary measure until a permanent program for the preservation of the housing was developed. The Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), implemented in rules at 24 CFR part 248, subpart B, provides permanent authority to deal with HUD-assisted projects where owners have the option of prepaying their mortgage loans.

Under LIHPRHA, the basic objectives are to assure that most of the "prepayment" inventory remains affordable to low-income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties. The 1990 Act provides authority under very specific and limited circumstances, for owners to prepay their mortgages.

B. Preservation Process

The preservation process begins, under the 1990 Act, when an owner of a project eligible to prepay a mortgage files a Notice of Intent. Appraisals are required if an owner requests incentives in exchange for extending low-income affordability restrictions or seeks to sell the project to a purchaser who will agree to extend the low-income affordability restrictions. The one category of purchaser to which the extension of low-income affordability restrictions does not apply is resident councils who are purchasing the property for conversion to homeownership. The appraisals' estimates of value will be the basis of any incentives for an owner seeking to retain a project and establish the maximum sales price for an owner seeking to sell a project. Accordingly, the owner and HUD will separately hire independent appraisers to determine the project's "as-is" values.

In the case of an owner seeking to retain a project, the basis of any incentives is an appraisal of a project's extension preservation value, i.e., its fair market value as unsubsidized market rate multifamily rental housing reflecting all repair and conversion costs needed to achieve the net income used in the analysis.

In the case of an owner seeking to sell a project, the maximum sales price will be the project's transfer preservation value, i.e., its fair market value at its highest and best use, reflecting all costs related to the conversion to its highest and best use.

Thus, both the extension and transfer preservation values measure the "as-is" value of the property, rather than the potential value of the property fixed-up.

Since owners have the option of modifying their initial decision and seeking to sell their project rather than requesting incentives (and vice versa), each appraiser will be required to determine both the project's extension preservation value and its transfer preservation value. It is expected that in many cases, a property will not have a higher and better use than unsubsidized market rate residential rental property.

The value determinations prepared by each appraiser will be reviewed by HUD and the owner. Once the appraisals have been reviewed and amended by the appraisers, HUD and the owner will, if necessary, attempt to reach a reconciliation. If that is not possible within a five percent leeway, a third appraiser will be jointly hired and compensated by HUD and the owner, to perform an independent third appraisal binding on both parties.

C. Appraisal Time Frames and Review

The appraisers must submit their appraisals, within four months after the date of receipt of the owner's Notice of Intent, to HUD and the owner, respectively. The appraisals must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as modified by these Appraisal Guidelines. Their reports will be subject to review and consultation by HUD staff and the owner. The review will ensure that the guidelines have been followed and that all pertinent data has been considered and properly applied in both appraisals. Amendments resulting from the review and consultation may also be requested of the appraisers. The review will address appraisal deficiencies, such as inadequate support for conclusions, lack of adherence to these guidelines, inconsistencies, etc.

The appraiser shall maintain the appraisal and related records for a period of five years. The third appraiser will have two months to complete an independent third appraisal of the property. The third appraiser will be provided the same information and Appraisal Guidelines as the first two appraisers.

The third report will be examined by both HUD and the owner, and will be binding on both parties as long as there are no inconsistencies or other deficiencies, the appraisal adheres to these guidelines, and the conclusions are adequately supported. The third appraisal will be subject to the same HUD technical review as the first two appraisals—for deficiencies that impact on its conclusions—before its acceptance as the final determinate of binding value.

2. Documentation to be Furnished the Appraisers

After verification of the appraiser's qualifications under 24 CFR 248.111, the HUD valuation staff will provide the appraisers with the first page of Form HUD–92013, Application—Project Mortgage Insurance (which provides a basic description of the property); the last three years' financial statements of the subject project; a determination as to whether the subject property has been designate, or is eligible to be designated, a "Historic Site" (see Section 4.A. infra); a set of plans, if available; and the name of the owner's contact person who will provide access to the property.

(The required repairs will be provided within 60 days of the receipt of the Notice of Intent.)

The appraisers shall present their written reports in the standard narrative format (Ninth Edition, The Appraisal of Real Estate (AIREA), pp. 578 through 592). The appraiser shall transcribe conclusions of extension preservation value (and, if its highest and best use is as unsubsidized market-rate multifamily rental, transfer preservation value) determinations on Form HUD–92264, Rental Housing Project Income Analysis and Appraisal, Sections A–F, K–L and O. (A copy of the form, and instructions on its completion, will be furnished to the appraiser at the time of assignment.) Additionally, the rental and expense analyses shall be performed on Forms HUD–92273, Estimates of Market Rent by Comparison and Form HUD–92274, Operating Expense Analysis Worksheet, respectively. (These forms and their instructions will also be furnished.) Estimates must be based on comparable market data. Any paucity of data must be addressed and fully documented as part of the appraisal report. (With reference to the several forms mentioned in this paragraph, the Department has requested that OMB extend the expiration date for its previous approval, under the Paperwork Reduction Act, of the use of these forms and to revise the uses of the forms to include their use in connection with the Preservation Program, as described in these guidelines.)

3. Definitions

A. In General

The terms "reserves for replacements", "federally-assisted mortgage", "prepayment", and "relevant local market", as used in these guidelines, shall have the same meaning as those terms have in 24 CFR part 248. (See definitions at 24 CFR 248.101, 57 FR 11992, 12042, April 8, 1992.)

B. Extension Preservation Value is the Fair Market Value of the housing based on the property's highest and best use as an unsubsidized market-rate residential rental property. The value will reflect the deduction of all improvement, repair and conversion costs that apply to that conversion use in the local marketplace;

C. Transfer preservation value is the Fair Market Value of the housing based on the property's highest and best use (residential or nonresidential). The value will reflect the deduction of all improvement, repair and conversion costs that apply to that conversion use in the local marketplace.

For further clarification:

Fair Market Value "AS–IS", reflects not only the property's value after conversion to a higher or better alternate use but also the subtraction of the net conversion and transition costs required to achieve that use. The Department expects that appraisers will determine fair market value "AS–IS" by developing an estimate of the property's value, after conversion, and then deducting all transition and conversion costs from that value.

The extension and transfer preservation value determinations will also reflect the following assumptions:

- Existing Federal low-income restrictions have been removed (with the exception of Section 8 contracts which will still be in effect during the conversion period);
- Environmental and historic preservation requirements will remain intact and must be considered by the appraiser;
- Repayment of the existing assisted mortgage(s) has been accomplished;
- The plan of conversion complies with prevailing laws and relevant requirements (State and local);
- The value will reflect an amount that will permit a return expected in the market by a knowledgeable entrepreneur typically participating in such undertakings;
- There has been completed an analysis and estimate of the costs associated with the repair and conversion to highest and best use, and as market rate rental housing; and
- The value will be as of the effective date of the appraisal.

4. Additional Appraisal Assumptions

A. Properties With Non-Federal Use Agreements or Historic Preservation Requirements

In some cases, the appraisals will be affected by the presence of an underlying project-specific use agreement other than the HUD program under which the property is insured or assisted. These project-specific agreements may be vague and, therefore, must be properly interpreted. The appraisers may seek legal advice from HUD Field Office Counsel on such restrictions and their impact on the appraisal.

For example, a typical non-HUD agreement accompanying a tax abatement might include only general reference to continued use of the property for low- and moderate-income tenants. This could be for a 40-year term, or by inference, continued use in a manner consistent with the housing program under which the project was originally financed by a State or local housing agency. It is the appraiser's responsibility, as part of the appraisal assignment, to explore whether the property has any such agreements.

The appraisals should be based on the assumption that the project-based use restriction would allow rent and income eligibility to rise to the maximum levels allowed by the non-HUD requirements.

Properties that are designated as Historic Sites or in the process of being designated as Historic Sites must meet certain special requirements, such as keeping the exterior of the structures as originally constructed, etc. HUD will inform the appraisers very early in the process if a particular property falls into this category by providing a determination at the assignment of the case. The appraisal report must discuss such requirements to the extent necessary to determine the impact on market value, and cost of compliance, if any.

B. Properties Subject to Rent Control

The appraisals will be affected by the requirements of rent control, if applicable. Section 232(b) of LIHPRHA indicates that certain State and local laws are not preempted by the statute, to the extent that these laws are "not inconsistent with the provisions of this subtitle and relating to building standards, zoning limitations, rent control, * * * to the extent such law or regulation is of general applicability to both housing receiving Federal assistance and non-assisted housing." For these properties, the impact of the ordinance on a particular property is complex and could be affected by a number of project-specific factors such as:

1. The level of rehabilitation planned (possible grounds for application of full exemption from the ordinance);

2. The number of units that have been voluntarily vacated (ability to increase rents for such units); and

3. Any other rent control requirements peculiar to the subject locality and property.

It is the appraiser's responsibility to explore fully and reflect the effect rent control would have on the unsubsidized value in establishing the assumptions for the appraisals for a specific property. The appraiser is also responsible for justifying the assumptions for the property regarding rent control. Such assumptions must be supported by all necessary data. The appraisers must seek other professional opinions as needed and document their reports accordingly. In summary, the objective of this appraisal is to approximate the value that the unregulated property would command in the market place in the absence of any Federal participation, but not excluding legal requirements such as rent control.

C. Other Local Requirements

Section 232(a) of LIHPRHA states that, in general, no State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that—

"(1) restricts or inhibits the prepayment of any mortgage * * * on eligible low income housing;

"(2) restricts or inhibits an owner of such housing from receiving the authorized annual return provided under section 214;

"(3) is inconsistent with the provision of this subtitle, including any law, regulation, or other restriction that limits or impairs the ability of the owner of eligible low income housing to receive incentives authorized * * *; or

"(4) in its applicability to low-income housing is limited only to eligible low-income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

Any law, regulation, or restriction described under paragraph (1), (2), (3), or (4) shall be ineffective and any eligible low-income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this subsection.

Section 232(b) provides:

(b) Effect—This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provisions of this subtitle and relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both housing receiving Federal assistance and nonassisted housing. This section shall not preempt, annul, or alter any contractual restriction or obligations existing before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act that prevent or limit an owner of eligible low-income housing from prepaying the mortgage on the housing (or terminating the insurance contract on the housing).

In accordance with the quoted provisions, any law that is encompassed by section 232(a) of LIHPRHA, as determined by HUD, shall not be considered when determining the preservation value of the property. (For a more detailed discussion of this issue, the preambles to the proposed and interim rules implementing LIHPRHA should be consulted. See the proposed rule at 56 FR 20262, 20265 (May 2, 1991) and the interim rule at 57 FR 11992 (April 8, 1992).)

If an appraiser has any questions regarding whether a State or local law is subject to section 232 of LIHPRHA, the appraiser should submit the questions to the HUD Field Office Counsel in the area where the property is located. Field Office Counsel will then determine whether the law in question is preempted under LIHPRHA, and will provide both appraisers with a written opinion stating whether or not the questioned law should be considered in determining the value of the property. Field Office Counsel opinions should be attached to the appraisal reports as documentation of HUD's decision.

5. Extension Preservation Value

In estimating the extension preservation value, the appraiser must assume that the property will be rehabilitated to a market quality standard through improvements that will enable it to attract and sustain the assumed unsubsidized market rate tenancy upon conversion, with rental estimates used to support that assumption commensurate with what that user group would be willing to pay. The appraiser should also give consideration to the effect on value of the property if the property has environmental problems, e.g., lead-based paint, asbestos, as compared to a like property without the same environmental problems. In this connection, the appraiser will need to assess:

A. *The improvements necessary to bring the property up to a quality standard needed to attract the assumed unsubsidized market rate tenants.* This is over and above the repairs and costs that may be required by the HUD work write-up to bring the property up to a good condition. (See section 5.B., below).

These improvements can be characterized as hypothetical, with the exception of operational/energy upgrades, since they would be considered only for the purpose of estimating the Extension Preservation Value and would not in all likelihood occur. The appraiser shall develop a list of these improvements and their associated cost and make it part of the report.

Following is a partial list of hypothetical upgrading items that could be required to attract unsubsidized market occupancy:

1. Common area carpeting and upgrading;
2. Renovation of kitchens and bathrooms to a greater extent than for subsidized housing;
3. Addition of swimming pool, hot-tub, exercise room, sauna, etc;
4. Upgraded landscaping;
5. Upgraded appliances;
6. Upgraded exterior refurbishing;
7. Addition of dishwashers, washers and dryers in units including the electrical or plumbing associated with such additions; and
8. Energy saving conservation measures such as:
   (a) Individual metering of utilities;
   (b) Double pane windows.

The importance of adequately defining and estimating the cost of these improvements cannot be overstated. The appraiser, in particular, must provide adequate support for the cost, and a cost-benefit analysis of these upgrading improvements. Energy saving measures such as individual metering, thermopane windows, and increased insulation are classified under hypothetical upgrades but may be included in the calculation of preservation rent. Great care should be taken to ensure that any operational/energy upgrade is not also included in the required repair category, lest it be double-counted. The appraiser will include in his/her estimate of cost for items of improvement which are upgrades, e.g., appliances, only the difference in cost between the upgrade and the lesser-quality improvement. This assumes that the required repairs include the replacement of the appliance, e.g., a refrigerator, that the appraiser considered needed to be upgraded. If the refrigerator was not included in the required repairs, only the salvage value, if any, of the existing refrigerator may be considered in this analysis. The appraiser should also give consideration, in his or her operational/energy upgrade estimate, to the effect on value of the property if the property has environmental problems, e.g., lead-based paint or asbestos, as compared to a like property without these environmental problems. The appraiser may receive assistance, aside from his or her own data sources, from the

appropriate State agency, as determined by the Secretary, or from other reliable sources. The local HUD Office can provide information concerning the appropriate State agency.

B. *Repairs needed to restore the project to its original physical standards for occupancy.* Original physical standards for occupancy do not mean that the project will be returned to an "as new" or mint condition, but that the property will meet local codes and the same "good" condition standard as competitive projects in the market area. HUD will provide to the appraisers a list of required repairs that will reflect only those repairs that an owner would encounter in the conventional marketplace to bring the property up to a "good" condition.

Note: The regulatory repair requirements noted below, such as lead-based paint, asbestos hazard abatement, and section 504 compliance, will not be included on this list unless there is a requirement of the local jurisdiction, or unless there is a reasonable expectation that local practice would demand them.

HUD will provide, 30 days after the Notice of Intent, these Appraisal Guidelines to its appraiser and to the owner. The owner will be provided a date for a joint inspection of the property for the purpose of determining the required repairs/rehabilitation and their cost in conjunction with the capital needs assessment. The capital needs assessment will also include an analysis of the adequacy of the project's reserve for replacement account. The owner will forward to his or her appraiser the Guidelines along with the inspection date. In addition to HUD'S A&E staff or the contractor conducting the inspection, the following will also be invited:

1. Owner or Owner's Representative;
2. HUD's Loan Management staff;
3. Representation of Local Code Enforcement body;
4. Both Appraisers or their Representatives; and
5. A Tenants' Representative.

The owner may present to the HUD inspector or contractor any assessment, reports, and studies of the repairs that he or she believes should be done. The project's tenants association, resident council, or tenants' representative may provide any information they wish, up to the date of inspection. An exit conference will be held shortly thereafter to indicate preliminarily the required repairs. While all information from the above-mentioned parties will be considered by HUD in developing the capital needs assessment, HUD will not be bound to incorporate the information into its analysis. HUD will provide to the appraisers, within 60 days of the Notice of Intent, the list of required repairs/rehabilitation and their cost, without consideration of Davis-Bacon wage requirements. (This list will reflect only the repairs required to bring the property up to a "good" condition, as noted above.)

The appraisers, in determining the extension preservation value, will have to subtract the cost of improvements and of the required repairs to bring the housing's present condition up to the quality standard necessary to attract market rate tenancy.

C. General Underwriting Requirements

The appraisal process establishes hypothetical preservation values. However, in actual fact, the property will be preserved for low-income occupancy under LIHPRHA. The property will be brought up to Housing Quality Standards as outlined in 24 CFR 886.307. It is noted that lead-based paint abatement (see 24 CFR part 35) is part of 24 CFR 886.307. In addition, asbestos hazard abatement requirements (see titles 29 and 40 of the CFR) will be enforced.

Additionally, section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8 will require the owner, depending on the extent of project repairs and alterations, to make all altered elements readily accessible to and usable by individuals with handicaps until five percent of the units are readily accessible to and usable by such individuals. If substantial alterations are needed, an additional two percent of the units shall be made accessible for persons with hearing or vision impairments. Also, alterations to common areas or parts of facilities that affect accessibility shall, to the maximum extent feasible, be made accessible to and usable by individuals with handicaps.

All the required costs, i.e., repairs to bring the property up to a good condition, HUD regulatory requirements (asbestos hazard abatement, lead based paint, etc.) and operational/energy upgrades (individual metering, etc.), will be included in the calculation of preservation rent. However, only the repairs required to bring the property up to a good condition and the operational/energy upgrades will be deducted from the fair market value to determine the property's preservation value.

HUD will provide the total capital needs assessment to the owner four months after the Notice of Intent.

D. Conversion Period

The preservation properties will be occupied by a mix of households of very low income (incomes at or below 50 percent of median income for the area), low-income (incomes above 50 percent and up to 80 percent of median income for the area) and moderate income (incomes above 80 percent and up to 95 percent of the median income for the area). Location and economic conditions may inhibit attracting unsubsidized market tenants. Consequently, any prospective buyer or present owner of the property may face obstacles and uncertainties in attempting to shift to unsubsidized market use. The extent of these uncertainties is most evident under a condominium conversion scenario, but is also clearly present in a scenario that proposes a substantial increase in tenant rents.

These factors will both reduce revenues and add costs, especially during the conversion period—the period during which the property undergoes transition from restricted use to market use. The following is a non-exhaustive list of factors that the appraisers must consider and document in their appraisals:

1. Conversion Period Revenues

(a) The turnover and absorption rates at which current tenants, unable to pay market rents, will move out and be replaced by market rate households;

(b) Estimated prevailing unsubsidized market rents;

(c) Estimated number of section 8 units whose contracts will extend through all or part of the conversion period. Annually, these section 8 rents will be increased by the annual adjustment factor. The appraisers will have to consider the remaining term of contract, along with the annual adjustment. This data will be provided either by the HUD Field Office or the owner; and

(d) Estimated revenue projections for units that will continue to have occupancy during the conversion period (including a plan that estimates the phase-in of rent increases for tenants expected to remain in the property during conversion).

2. Conversion Period Costs (Other Than Upgrading or Required Repairs)

(a) Estimated income loss due to vacancy from start of repairs to point of reaching sustaining occupancy;

(b) Estimated legal costs, e.g., evictions;

(c) Estimated relocation costs required by local law;

(d) Estimated financing costs associated with any mortgage that the appraiser might assume in the capitalization rate:
(1) Application fee;
(2) Appraisal fee;
(3) Credit checks; and
(4) Placement fee; and
(e) Estimated marketing program:
(1) Leasing personnel;
(2) Model units; and
(3) Advertising.

These revenue/cost assumptions for the conversion period will vary by property in accordance with project characteristics, such as:

• Differential between current project rents and prevailing market rents; e.g., sometimes rents on a section 8 contract may provide net revenue to the project and sometimes may result in a net cost. The appraisers should document the impact of the section 8 contract during the conversion period.

• Income distribution of current tenants, e.g., greater ease of conversion in properties with large percentage of moderate vs. low-income tenants;

• Degree of disruption due to substantial rehabilitation of occupied units, with additional costs of phasing and on-site/off-site relocation; and

Degree of potential market resistance associated with converting a project that has been occupied by subsidized tenants for many years to an unsubsidized occupancy.

It is expected that the net effect of the revenues and costs during the conversion period could represent a significant adjustment in the determination of the extension preservation value of the property which (as was noted in the overview) is the as-is value of the property based on the assumption that the highest and best use of the property is as unsubsidized market rate rental housing.

The appraisers will be required to discount these total net conversion costs related to renting the housing units to an unsubsidized, market rate tenancy at a discount rate equal to the local prevailing interest rate on savings accounts in depository institutions. Payments from these discounted conversion costs shall be assumed to be made at least annually, or more frequently, when appraisers compute the discounted present value of conversion costs in their determination of the extension preservation value. HUD wishes, however, to repeat that these conversion and repair costs are to be reflected in the value estimation once, and are not to be double-deducted. Also, the assumed income group must be realistic, relative to the location and type of the project. Aside from the appraisers' own sources, the appraisers may place reliance upon the assessment of conversion costs determined by the appropriate State agency, if that agency has been approved by the Secretary. (Contact the local HUD Office for the appropriate State agency.)

E. Operating Expense Estimate

In estimating the operating expenses when the highest and best use is as an unsubsidized, market-rate rental project, the appraiser must use the greater of actual project operating expenses at the time of the appraisal (based on the average of the actual project operating expenses during the preceding three years) or the estimated operating expenses after conversion, assuming a typical long-term operation as market rate housing.

Note: Owners will submit copies of the last three years of financial statements, if not already submitted to HUD.

If current year operating expenses are higher than those of the preceding three years, the appraiser has made a determination, subject to the Commissioner's approval, that these costs are unlikely to decrease in the future, the appraiser shall use current year operating expenses, rather than operating expenses for the preceding three years, for purposes of comparison with projected operating expenses after conversion.

Similarly, if the current year operating expenses are lower than those of the preceding years, and the appraiser has made a determination, subject to the Commissioner's approval, that these costs are unlikely to increase in the future, the appraiser again shall use current year operating expenses, rather than operating expenses for the preceding three years, for purposes of comparison with projected expenses after conversion.

The appraiser, based on the local market, will estimate what the annual deposit to a reserve for replacement should be (if any) in the appraiser's projected expense estimate, and whether the actual reserve for replacement amount should be included in the three-year test.

The actual project operating expenses should be reviewed carefully to eliminate extraordinary and nonrecurring expenses. HUD-required administrative costs which would terminate upon conversion to a non-subsidized project should be classified as a nonrecurring expense. Items which are extraordinarily low or high should also be identified. For example, an identity of interest management fee, i.e., where the owner is managing the property, if other than market, should not be used.

The operating expense estimate shall reflect the unsubsidized market nature of the tenancy. For example, a doorman's salary could be in the expense estimate for a conversion to market tenancy, but not in the expense estimate assuming subsidized occupancy.

F. Specific Guidelines

1. A capitalization rate based on market data is required. The capitalization rate should reflect conventional market loan/equity ratios, debt service rates, and equity dividend rates.

Equity dividend rate data, extracted from comparable unsubsidized properties that do not need conversion, reflects the return on investment of anticipated risk associated with the transfer of an unsubsidized multifamily property not requiring the additional effort and risk a conversion does. However, in order to convert to an unsubsidized market rate use converters will experience greater risk. Accordingly, the additional entrepreneurial return (perhaps 10 to 20 percent, based on market analysis) associated with conversion should be reflected in the equity dividend rate extracted from market comparables.

For example, a 5% equity dividend rate adjusted to reflect a 10% converter's profit would be $.05/(1.00 - .10) = .05555$, or 5.56%. A 6% equity dividend rate adjusted to reflect a 20% converter's profit would be $.06/(1.00 - .20) = .075$, or 7.5 percent. The equity dividend rate would be combined with the mortgage constant conventionally available at the typical loan ratio to arrive at an overall rate.

Similarly, when using the direct capitalization approach, the overall capitalization rate must be adjusted. Of course, if the comparables were properties that would require the same conversion effort as the subject, such an adjustment would not be applicable. This must be fully documented in the report.

2. Market Value by Direct Sales Comparison—(to be used if the appraiser considers it necessary). Unsubsidized properties in the projected highest and best use condition should be used as comparables. This approach will reflect the fair market value after completion of repairs or conversion. However, if the market comparison approach is determined by the appraisers to be necessary, gross income multiplier (GIM) or effective gross income multiplier (EGIM) must

also be used in addition to whatever market comparison technique is used by the appraiser. Accordingly, both a market comparison and a multiplier approach must be used as part of each report, whenever the appraiser determines to use the comparison approach.

3. Summation Approach—(to be used if the appraiser considers it necessary). The summation approach, if used, will reflect the replacement cost of the project new in its projected highest and best use converted condition. (HUD does not require the replacement cost to be depreciated. See HUD correlation requirement, below.) This instruction is predicated on the fact that various kinds of depreciation are difficult to measure and that the total amount of depreciation of an income property is reflected in the amount of income the property can produce. Accordingly, if the income is properly calculated, it will be reflective of any applicable depreciation.

4. In the correlation of value, the undepreciated summation approach shall serve only as a final upper limit on the correlated value. Since this is income property, it is reasonable to expect that its value will be no higher than its income can support. However, if the property's replacement cost, before depreciation, should be less than the value indicated by capitalization or comparison, in no event may the final correlation of value exceed the property's replacement cost before depreciation.

5. In an income-producing property, normally in the correlation of value more weight will be given the capitalization approach. A capitalization method that employs a discounted cash flow approach is not acceptable to the Department (except as discussed in Paragraph 6.B.2 of these guidelines).

6. The appraiser must assure that all the repair costs, along with the conversion costs, have been properly reflected in all the approaches to value.

7. In determining the occupancy percentage to be used in the income approach to value, the appraiser should base the estimate on market data assuming a typical long term operation, rather that a first year operation. It should also reflect not only the physical vacancies in the project, but also bad debt and collection costs.

6. Transfer Preservation Value

The transfer preservation value is based on the property's highest and best use. The value is based on an assumed conversion of the housing to its highest and best use, reflecting all rehabilitation expenditures that would be necessary to convert to that use, and properly assessing and reflecting all other costs (conversion) that the owner could reasonably be expected to incur if the owner converted the property to its highest and best use.

If the highest and best use is as a market rate rental multifamily project, a transfer preservation value is not required, since that value would have been determined under Paragraph 5 above. However, the appraiser must address that consideration in the report.

Factors to be documented in determining the amount of revenues during the conversion period are as follows:

- Estimated prevailing market rent or condominium unit prices;
- Estimated absorption rates for vacant condominium units;
- Estimated absorption rates for commercial or other non-residential use, if applicable; and
- Estimated Section 8 units still under contract during the conversion period.

In addition to the conversion costs listed under Paragraph 5.D.2, the following must be documented by the appraiser:

- Estimates of marketing and sales costs (e.g. commissions, model units, advertising); and
- Estimates of legal costs, (e.g. condominium documents).

A. Highest and Best Use Determination

A narrative sufficient to document the appraiser's determination of highest and best use must be developed. The appraiser must be able to demonstrate that the highest and best use can meet the following criteria if it is other than the present use:

1. That it is physically possible;
2. That it is legally permissible;
3. That it is financially feasible and;
4. That it is maximally productive.

Since these properties are all improved with multifamily rental structures, the appraiser must also consider (as discussed under the extension preservation value) the improvements and required repairs or demolition and conversion costs required to arrive at the highest and best use, as appropriate.

B. Highest and Best Use: Cooperative, Condominium or a Non-Residential Use

1. *Cooperative.* A cooperative building is owned by a nonprofit corporation or trust in which each owner of stock pays a proportionate share of operating expenses and debt service on the underlying mortgage, which is paid by the corporation. This share is based on the proportion of the total stock owned, representing the proportionate value of a single apartment unit. Each owner also has, by proprietary lease, the right to occupy a particular apartment.

The members of a cooperative have the common purpose of acquiring housing at the most competitive cost, with savings shared by members. The best measure of this competitive acquisition price for conversion to cooperative use is its "as-is" value for use as an unsubsidized market rate rental property. HUD's existing procedure for underwriting conversions to cooperative use recognizes this and establishes the "as is" value of the property to be converted as a rental property using unsubsidized rents. Since this would be based on the supply of other market rate rental properties, the "as is" value for conversion to cooperative use will be its "as is" value for conversion to use as an unsubsidized market rate rental property.

2. *Condominium.* Instead of developing a market rate rent, the appraiser will develop values for each unit, based on sales prices of comparable units in the marketplace. The Uniform Residential Appraisal Report (URAR) will be used to develop the value for each unit type and size. The appraiser will develop a sales price estimate for each unit reflecting its type, size, location or any other discernible differences to which the market will react.

The most applicable capitalization approach in this scenario is a discounting technique applied to each year over a selling period not to exceed two or three years. This technique always assumes that the values of the condominium units are properly estimated. In arriving at the "as-is" value, upgrading repairs must be in concert with the needs of the assumed condominium purchaser.

3. *Non-Residential use.* If non-residential use is determined to be the highest and best use, all costs of repairs or demolition and conversion, including holding cost and profit, must be subtracted from the estimated market value for that use to determine the transfer preservation value based on that use.

7. Relevant Local Market Study

In every case, the HUD contract appraiser (not the owner's appraiser or third appraiser, if required) will prepare a rental study on Forms HUD–92273, Estimates of Market Rent by Comparison, indicating the prevailing unsubsidized rents for the relevant local market area. *Market Area* is defined to be a geographic area in which

alternative, similar properties effectively compete with the subject properties in the minds of probable, potential purchasers and users. Such an area shall be smaller than a market area established by the Commissioner for purposes of determining the Section 8 existing fair market rent. These unsubsidized rents will assist HUD in its determination of the prevailing rents in the Relevant Local Market in connection with matters unrelated to the appraisers' value determination.

The appraiser, in estimating value, may use rent comparables that he or she believes are appropriate.

In this rent study, the unsubsidized rent comparables used must come from the relevant local market area, or if comparables are not found, a similar market area having the same demographic and market characteristics in which properties would effectively compete with the subject property in the minds of probable, potential users.

The HUD valuation personnel will adjust the rents to reflect the total charge to the tenants, including tenant-paid items such as utilities.

In a nonmetropolitan area, if there is a lack of comparable unsubsidized multifamily projects in the same geographic locality, the appraiser may use comparables from noncontiguous localities, as long as they are in the same county or parish and have similar demographic and market characteristics. If there are no comparables in the relevant local market area or noncontiguous areas, the appraiser will so document in the report.

In a nonmetropolitan or a metropolitan area, if there is a lack of comparables of a certain unit type, e.g., for market-rate four bedroom units, the appraiser either may make adjustments by extrapolation to the three-bedroom comparables, or may provide his or her rationale and documentation for developing the market rent for the unit type.

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Friday
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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for Technical Assistance to Foster Local Financing Techniques for Neighborhood Empowerment; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3416; FR-3168-N-01]

NOFA for Technical Assistance to Foster Local Financing Techniques for Neighborhood Economic Empowerment

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA) for FY 1992.

SUMMARY: This NOFA announces the availability of $1 million in Technical Assistance grants to promote a variety of financing techniques maximizing private sector, not governmental, resources that can be used for neighborhood economic development in low-income neighborhoods in Community Development Block Grant (CDBG) entitlement communities. The grants should aid local CDBG program activities aimed at (1) providing a test of the financing technique in the neighborhood marketplace; and (2) demonstrating the applicability of the financing technique for low-income neighborhoods in other CDBG entitlement communities.

In the body of this NOFA is information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, availability, available amounts, and selection criteria;

(b) The application process, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: The actual application due date will be specified in the application kit. Applicants will have at least 45 days to prepare and submit their proposals. The 45-day response period shall begin to run from the first date upon which application kits are made available. Applications may be requested beginning May 8, 1992.

ADDRESSES: To obtain a copy of the application kit contact Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits may be made by calling (202) 708–1000 or may be faxed to (202) 708–3363. When requesting an application kit please leave your name, mailing address (including zip code), area code and telephone number, and reference FR 3168. All questions should be directed to the person indicated as the contact for further information listed in this NOFA. The TTD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.).

FOR FURTHER INFORMATION CONTACT: Alberta A. Zinno, Office of Economic Development, Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7140, Washington, DC. 20410, (202) 708–3773. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3540(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

A. Authority

This competition solicits grant applications from applicants eligible to receive technical assistance funds, under 24 CFR 507.402(c), as limited by the applicants listed in section I.C.2. of this NOFA, to pursue and test local financing techniques for small scale economic development programs, projects, or activities in low-income neighborhoods in CDBG entitlement communities. The criteria used by HUD in selecting awardees is contained in section II. Factors For Award.

This competition is authorized under title I, section 107(b)(5) of the Housing and Community Development Act of 1974, as amended. Program requirements (including eligible activities) are contained in 24 CFR 570.400 and 570.402. Please note that any proposed technical assistance activities must meet the eligibility requirements established in these regulations.

B. Allocation Amount and Form of Award

For this competition, HUD is making available up to $1 million in Community Development Block Grant Technical Assistance Program funds for all awards to eligible applicants. HUD anticipates funding between 10 and 12 applications for grants of up to $100,000 each. Each award is subject to the requirements of the HUD Technical Assistance Program regulations at 24 CFR 570.400 and 24 CFR 570.402.

C. Description of Technical Assistance Competition

1. Background and Objectives

The entrepreneurial spirit of many neighborhood-based organizations is often stifled by the lack of access to private funding sources or the inability to incorporate creative financing ideas in local economic development projects, programs or activities. The Secretary believes that CDBG funds should be used to promote economic self-sufficiency and the entrepreneurial spirit found in low-income neighborhoods by encouraging grass-roots efforts that finance local enterprise development while minimizing the use of Federal resources.

Using local CDBG funds to increase neighborhood-based community organizations' knowledge of and experience with various financing tools will enable them to carry out projects, programs, and activities to create employment and increase the incomes of the residents of low-income neighborhoods. Teaching low-income people to devise and implement various financing techniques, including leveraging of private dollars, will empower them to carry out neighborhood economic development programs. These financing techniques may require the development of partnerships between the local public and private sectors and result in financing arrangements that are unique to a community but nevertheless should yield significant benefits to the community.

Technical assistance funds are to be used for (a) the design, coordination and implementation of the technique for a specific economic development activity in a low-income neighborhood; and (b) the documentation of the recipient's experience so that it can be shared with other communities.

For this NOFA, the term "low-income neighborhood" means a contiguous area within the entitlement city or urban county where 51 percent or more of the residents are low-income as defined in 24 CFR 570.3 (s) and (t).

The focus of this competition is to aid local CDBG-funded efforts to promote self-sufficiency in local groups by pursuing creative solutions to financing local programs through private sector participation and minimizing reliance on Federal programs. For example, neighborhood organizations might pursue establishment of peer-to-peer revolving loan funds for the creation of local businesses and job creating activities or establish a business development fund using monies received

from selling economic development loans in the secondary market.

The objectives of the technical assistance program are to aid local CDBG-funded efforts:

(1) To help organizations, especially nonprofit organizations in low-income neighborhoods, expand their role and effectiveness in addressing pressing economic development needs, particularly small business development and neighborhood revitalization;

(2) To devise and apply creative financing techniques for neighborhood economic development projects, programs and activities;

(3) To identify financing techniques and approaches which can be duplicated in other CDBG communities with similar market conditions;

(4) To identify ways for reducing the dependency on the Federal government for financing local economic development programs, projects or activities by highlighting activities which rely on private sector financing; and

(5) To provide written documentation of this technical assistance effort that can be used as a financing guide for other CDBG communities.

2. Eligible Applicants

Eligible applicants are:

(a) Communities that are metropolitan cities or urban counties receiving CDBG entitlement funds;

(b) State and local government agencies or entities, including Public Housing Authorities, that carry out economic development programs within their respective jurisdictions;

(c) Local nonprofit organizations, including Resident Management entities, or for-profit organizations that propose the development and implementation of economic development programs, projects or activities targeted to low-income neighborhoods;

(d) National or local foundations, real estate trust funds, public or private pension funds, public or private revolving loan management entities or other related entities chartered to do business as a lending source for local economic development programs; or

(e) National, state or local lending institutions, such as commercial banks, mortgage brokers, investment brokers or other entities whose purpose is to provide funds for economic development projects.

3. Program Requirements

This program is funded under the technical assistance program of section 107(b)(5) of title I of the Housing and Community Development Act of 1974, as amended. Technical assistance funds must be used for the provision of skills and knowledge to improve effectiveness in planning, developing and administering CDBG assisted activities. Technical assistance activities funded under this grant program must be directed at economic development activities which are being or are planned to be carried out in part with CDBG funding provided by metropolitan cities and urban counties participating in the CDBG entitlement grant program.

Consistent with the purposes of this NOFA to reduce dependency on the Federal government for financing local economic development programs, projects or activities, HUD is limiting the use and amount of CDBG program funds as follows:

(a) The amount of CDBG funds that can be used to undertake economic development projects developed through this award cannot exceed 49 percent of the total economic development project cost.

(b) CDBG funds cannot be used to finance the start-up or operations of a small business enterprise, unless the entity awarded technical assistance funds under this competition is administering a CDBG funded loan program.

(a) Eligibility criteria—(i) CDBG nexus. Applicants must establish a CDBG nexus between the technical assistance to be provided and the proposed economic development programs, projects or activities targeted for assistance. Proof of nexus means that the economic development activities are being funded or are planned to be funded in part with the locality's CDBG program funds. This means that the CDBG funds may be used directly for the economic development project, program or activity, for related infrastructure improvements or for related administrative costs for developing the financing package.

Proof of nexus shall consist of a statement signed by the Chief Executive Officer of the CDBG-funded community or the director of the local CDBG program that (1) identifies the economic development activities to be assisted under this grant program; (2) describes how the technical assistance will assist the community in improving the development and implementation of the proposed economic development activities; and (3) provides an estimate of the amount of CDBG funds currently committed, or planned to be committed, to the proposed economic development activities within the proposed grant period.

(ii) Designation as technical assistance provider. Applicants other than CDBG entitlement communities are required to submit a letter of designation from the Chief Executive Officer of the CDBG entitlement community proposed to receive technical assistance services. The letter must certify that "(name of the entitlement community) is designating the (name of applicant organization) as a technical assistance provider to assist the community in carrying out the creative financing technique necessary for implementation of (activities targeted for assistance under this NOFA)".

Applicants whose designation letter or official CDBG nexus statement regarding the use or planned use of CDBG program funds are not included in the application, must submit the letter or official statement to HUD within thirty (30) calendar days following the application submission deadline filing date. Failure to submit the required designation letter or CDBG nexus statement with the proper signature authority within thirty (30) calendar days following the filing deadline date will eliminate the applicant from further funding consideration under this competition.

(b) Eligible activities. Eligible technical assistance activities are specified in 24 CFR 570.402. Technical assistance activities eligible for funding under this NOFA include providing skills and knowledge to facilitate the planning, development and administration of CDBG assisted economic development activities. For example:

- Identifying private sector sources of capital and securing start-up and operating financing for the neighborhood economic development project, program or activities;
- Training and serving as mentors to neighborhood developers and entrepreneurs throughout the entire development cycle and project start-up period;
- Conducting market tests of creative financing techniques to determine feasibility or teaching local developers in low-income areas how to conduct market tests for financial feasibility;
- Identifying financial intermediaries committed to economic development in low-income areas and securing non-Federal development capital for the proposed economic development activities;
- Analyzing rules and requirements of HUD, and other Federal, state or local departments or agencies, as well as private sector agencies or organizations, that are disincentives to the use of creative financing techniques for economic development projects in low-

income areas and preparing regulatory waiver requests for presentation to the appropriate organization, official or board;

• Coordinating relevant activities with state, local and Federal agencies;

• Developing financial statements and proformas and negotiating financing terms on behalf of the economic development developer; or

• Institutionalizing a process to insure public/private partnerships in the project.

II. Factors for Award

A. Rating Factors

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum number of points for each factor are provided below. The total number of points is 100. Program Policy Criteria as identified in 24 CFR 570.402(f)(1)(ii) will not be used in reviewing and selecting applications for funding under this NOFA.

(1) (16 points) The probable effectiveness of the application in meeting the needs of localities and accomplishing program objectives. In rating this factor HUD will consider:

(a) (*8 of the 16 points*) The extent to which the applicant proposes to use creative or innovative techniques to finance neighborhood economic development projects, programs or activities using private sector funds;

(b) (*3 of the 16 points*) The extent to which the proposed economic development project, program or activity will be implemented immediately after the application is funded for the economic benefit of low-income persons residing in the neighborhood targeted for assistance; and

(c) (*5 of the 16 points*) The extent to which the applicant indicates the neighborhood targeted for assistance is low-income.

(2) (*36 points*) The soundness and cost-effectiveness of the proposed approach. In rating this factor HUD will consider:

(a) The extent to which the proposed financing technique appears feasible. Feasibility will be evaluated in terms of:

(i) (*5 of the 36 points*) The past experience of the applicant in overcoming administrative, regulatory or statutory barriers that would otherwise have prohibited a neighborhood economic development project, program or activity in a low-income neighborhood from being implemented;

(ii) (*5 of the 36 points*) The organizational structure the applicant proposes to use to implement the project, program or activity;

(iii) (*14 of the 36 points*) The extent to which the applicant has secured funding commitments for implementation of the project, program or activity as evidenced by:

—(*7 points*) financial commitments for development and implementation of the economic development project, program or activity from a public-private partnership;

—(*7 points*) financial commitments secured for project, program or activity development and implementation from non-governmental sources other than the partnership; and

(b) The extent to which the applicant can demonstrate an effective partnership of public and private organizations to develop and implement the proposed economic development project. The partnership commitment will be judged by:

(i) (*3 of the 36 points*) The extent of the roles of state and local public sector or quasi-governmental partners in development and implementation of the economic development project, program or activity;

(ii) (*5 of the 36 points*) The extent of the roles of non-governmental organizations and entities in the development and implementation of the economic development project, program or activity; and

(c) (*4 of the 36 points*) The extent to which the proposed management plan delineates proposed tasks, staff responsibilities for each task, requires staff accountability, and presents a clear and feasible schedule for conducting and completing the activities on time and within budget.

(3) (*44 points*) The capacity of the applicant to carry out the proposed activities in a timely and effective fashion. In rating this factor HUD will consider:

(a) (*6 of the 44 points*) The extent to which the applicant's organization has experience in developing and implementing neighborhood-based business development and job creating activities targeted to low-income neighborhoods;

(b) (*5 of the 44 points*) The extent to which the applicant's organization has developed and implemented activities and programs aimed at achieving self-sufficiency for low-income people and organizations;

(c) (*5 of the 44 points*) The extent to which the applicant's organization has experience in using private sector resources to reduce the reliance of local organizations on Federal programs for implementing economic development activities;

(d) The extent to which the applicant's staff demonstrates expertise in the following areas:

(i) (*5 of the 44 points*) gaining the support and participation of low-income residents in the proposed economic development project, program or activity;

(ii) (*5 of the 44 points*) creating techniques to secure private sector financing for the development and implementation of economic development projects, programs or activities in low-income neighborhoods;

(iii) (*5 of the 44 points*) using CDBG funds to leverage financing from the private sector for economic development projects, programs or activities in low-income neighborhoods; and

(e) The background and experience of the applicant organization and proposed project manager relevant to:

(i) (*5 of the 44 points*) creating new financing techniques and applying them to economic development projects, programs or activities in low-income areas;

(ii) (*5 of the 44 points*) managing a consortium of partners involving the public and private sectors in project development and implementation;

(iii) (*3 of the 44 points*) managing and accounting for project funds, and completing projects on time and within budget.

(4) (*4 points*) The extent to which the results may be transferable or applicable to other CDBG program participants. In judging this factor HUD will consider:

(a) (*2 of the 4 points*) The extent to which the proposed technical assistance appears likely to increase the capacity of CDBG recipients to better use creative financing techniques;

(b) (*2 of the 4 points*) The extent to which the creative financing technique is likely to be feasible in areas of the country other than the locality selected by the applicant as the target area for this program.

B. Selection Process

Applications for funding under this NOFA will be evaluated competitively and awarded points based on the evaluation criteria specified in Section II, Factors for Award, of this NOFA. After assigning points based upon the evaluation criteria identified in Section II, Factors for Award, a headquarters evaluation panel shall rank the applications in order by score. Applications will receive funding consideration provided they (a) meet the eligibility requirements for establishment of a CDBG nexus and designation as a technical assistance

provider; (b) receive a minimum score of 7 points for Rating Factor (2)(a)(iii); (c) receive a minimum score of 7 points for Rating Factor (3)(d); and (d) receive a minimum total score of 60 points. Applicants meeting these requirements will be funded in rank order until all available funds have been expended. Applications which do not meet the requirements stated above will not be funded even if funds are available. HUD reserves the right to fund all or portions of the proposed activities identified in each application based upon their eligibility.

If two or more applications have the same number of points, the application with the most points for Rating Factor (3) shall be selected. If there is still a tie, the application with the most points for Rating Factor (2) shall be selected.

If the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine (based upon the proposed activities) if it is feasible to fund part of the application and offer a smaller grant to the applicant. If HUD determines that given the proposed activities a smaller grant amount would make the activities not feasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application until all applications within the funding range have been exhausted or available funds have been expended.

If HUD receives an insufficient number of applications to expend all funds, or if funds remain after HUD approves all acceptable applications, HUD may negotiate increased amounts of grant awards with applicants selected for funding.

III. Application Submission Process

A. Obtaining Applications

For an application kit (Request For Grant Application, RFGA), contact Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits may be made by calling (202) 708–1000 or may be faxed to (202) 708–3363. When requesting an application kit please leave your name, mailing address (including zip code), area code and telephone number, and reference "FR 3168". All questions should be directed to the person indicated as the contact for further information listed in this NOFA. The TTD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be complete and be received in the place designated for receipt by the deadline date and time specified in the application kit. 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.

C. Checklist of Application Submission Requirements

1. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit (RFGA). The following is a checklist of the application content that will be specified in the RFGA.

(a) OMB Standard Form 424 A and B (Request for Federal Assistance) signed by the Chief Executive Officer of the entity or organization submitting the application for technical assistance funds.

(b) A budget delineated by task.

(c) A description of the activities to be undertaken, the location where activities are to take place, and how the location meets the requirements of this NOFA for serving a low-income neighborhood.

(d) A Management Plan listing each major task and subtask, a timetable for conducting each major task and subtask which includes major milestones for completing the proposed work activities. The management plan should also identify staff assigned to complete each major task and subtask.

(e) A narrative description of how the applicant meets each of the factors for award contained in section II. of this NOFA. The application kit will contain specific instructions for how each factor for award should be addressed.

(f) If other funds are to be committed, a letter from the Chief Executive Officer of the locality, corporation or other public or private entity providing non-federal funds and certifying as to the type, amount, source and timing of the non-federal funds.

(g) Letters of cooperation and commitment from any public or private organizations and/or entities which are participating in this technical assistance program.

2. Certifications

Each application must contain an original and two copies of the certifications identified below. Each certification must be signed by the Chief Executive Officer of the applicant organization unless otherwise noted.

(a) Drug-free Workplace certification.

(b) Certification regarding lobbying pursuant to section 319 of the Department of Interior Appropriations Act of 1989, which generally prohibits use of appropriated funds for lobbying.

(c) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to title IX, section 906 of the Affordable Housing Act of 1990 (applies only to applicants which are units of general local governments).

3. Other Documents

(a) Statement regarding the commitment of CDBG funds signed by the Chief Executive Officer of the CDBG entitlement community or the director of the community's CDBG program.

(b) Letter signed by the Chief Executive Officer of the CDBG entitlement community designating the applicant as a technical assistance provider, if applicable.

D. Corrections To Deficient Applications

After the submission deadline, HUD will screen each application to determine whether or not it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has fourteen (14) calendar days from the date of written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the fourteen calendar day cure period, HUD may disqualify the application.

The fourteen calendar day cure period applies only to non-substantive deficiencies or errors, which encompasses only those items which are not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

V. Other Matters

A. 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.)

B. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grants, or loans. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

C. Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 contains two provisions concerning 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 29912). Appendix A of that rule contains examples of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 or 708–1112 (TDD). These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

D. Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR 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 inquires to the subject areas permitted by 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. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

F. Federalism Executive Order

The General Counsel, as the Designated Official under Section 8(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on states or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits participation in an effort to provide technical assistance to promote the use of creative financing techniques for economic development projects in low-moderate income neighborhoods in Community Development Block Grant entitlement communities. The NOFA does not impinge upon the relationships between the Federal Government, and state and local governments.

G. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Familiy, has determined that this document may have potential for significant beneficial impact on family formation, maintenance and general well-being. The technical assistance to be provided by the funding expected to help low-moderate income families residing in low- and moderate-income neighborhoods in CDBG entitlement communities through the funding of economic development activities generated by using creative financing techniques. Since the impact on the family is considered beneficial, no

further review under this Order is necessary.

H. Catalogue

The Catalog of Federal Domestic Assistance Program number is 14.227.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Dated: April 30, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–10760 Filed 5–7–92; 8:45 am]

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federal register

Friday
May 8, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for Technical Assistance To Aid Low- and Moderate-Income Youth To Become Self-Employed; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3404; FR-3192-N-01]

NOFA for Technical Assistance To Aid Low- and Moderate-Income Youth To Become Self-Employed

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for FY 1992.

SUMMARY: This NOFA announces the availability of up to $1,500,000 in Technical Assistance Program grants to support local self-employment projects for low- and moderate-income youths between the ages of 14 and 21 residing in low- and moderate-income neighborhoods or, in the cases of Indian tribes or Alaskan native villages, identified service areas. Up to an additional $1,000,000 in Technical Assistance program funds may be awarded should funds from other technical assistance competitions become available for further awards prior to the end of Fiscal Year 1992 after selections from those competitions have been made. Applicants may apply for awards up to $75,000. Each award will be funded as a grant for a period of up to 24 months.

The grants must be to provide technical assistance to facilitate activities funded with Community Development Block Grant (CDBG) funds in metropolitan cities or urban counties entitled to receive CDBG funds (Entitlement program), in communities participating in the HUD-administered Small Cities program or in the State-administered program for Non—Entitlement Communities, or in areas participating in the CDBG program for Indian tribes and Alaskan native villages.

In the body of this NOFA is information concerning:

(a) The principal objective of this technical assistance competition, the funding available, eligible applicants and activities, and factors for award;

(b) The application process; and

(c) A checklist of application submission requirements.

DATES: The application deadline will be specified in the application kit, and will be firm as to date and hour. Applicants will have at least 45 days to prepare and submit their proposals. The 45-day response period shall begin to run from the first date upon which the application kits are available.

EFFECTIVE DATE: Applications may be requested beginning May 8, 1992.

ADDRESSES: To obtain a copy of the application kit, contact: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits must be in writing, but may be faxed to: (202) 708–3363 (this is not a toll-free number). Requests for application kits must include your name, mailing address (including zip code), telephone number (including area code), and must refer to document FR–3192.

FOR FURTHER INFORMATION CONTACT: Donna Clarke, Office of Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone Number: (202) 708–2035; TDD number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description:

A. Authority

This competition is authorized under section 107(b)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (the Act). Program requirements (including eligible activities) applicable to awards made under this competition are contained in 24 CFR 570.400 and 570.402 (the Community Development Technical Assistance Program).

For purposes of this NOFA, "low- and moderate-income person" means, for all applicants except Indian tribes and Alaskan native villages, a person as defined in §§ 570.3 (r) and (m). For Indian tribes and Alaskan native villages, "low- and moderate-income person" means a person as defined in §§ 571.4 (h) and (i).

"Low- and moderate-income neighborhood" means a contiguous area within the entitlement city, urban county or small city, where 51 percent or more of the residents are low- and moderate-income as defined in §§ 570.3 (r) and (m). In the case of a jurisdiction of under 25,000 population the entire jurisdiction could be considered as a low- and moderate-income neighborhood if 51 percent or more of the residents meet the low- and moderate-income definitions.

For purposes of this NOFA, an eligible Indian tribe or Alaskan native village should substitute the term "identified service area", as defined in § 571.4(g), for all references to low- and moderate-income neighborhoods.

The term "small cities" as used in this document means units of general local government receiving Community Development Block Grant (CDBG) funds under the HUD-administered Small Cities program, pursuant to 24 CFR part 570, subpart F, or the State-administered CDBG Non-Entitlement program pursuant to 24 CFR part 570, subpart I.

B. Allocation Amount and Form of Award

For this competition, HUD is making available up to $1,500,000 in Technical Assistance program funds to support local self-employment projects for low- and moderate-income youths between the ages of 14 and 21 residing in low- and moderate-income neighborhoods or, in the case of Indian tribes or Alaskan native villages, identified service areas. Up to an additional $1,000,000 in Technical Assistance program funds may be awarded should funds from other technical assistance competitions become available for further award prior to the end of Fiscal Year 1992, after selections from those competitions have been made. Each award will be for an amount of up to $75,000, and will be funded as a grant. HUD will accept multiple applications from an eligible applicant, as described in section I.E., Submitting Multiple Applications, of this NOFA.

The grants must be to provide technical assistance to facilitate activities funded with CDBG funds in metropolitan cities or urban counties entitled to receive CDBG funds (Entitlement program), in communities participating in the HUD-administered Small Cities program or the State administered program for Non-Entitlement Communities, or in areas participating in the CDBG program for Indian tribes and Alaskan native villages.

Specific work activities and project budgets will be negotiated at the time of the grant award. Each award will be subject to the requirements of 24 CFR 570.400 and 570.402, 24 CFR part 85 (for local governments and Indian tribes and Alaskan native villages), and OMB Circular A–110 (for non-governmental entities).

C. Description of Technical Assistance Competition

1. Background and Purpose

The primary objective of title I of the Housing and Community Development Act of 1974 (the Act) is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities principally for persons of low- and moderate-income. Toward this objective, section 107(b)(5) of the Act authorizes the Secretary of HUD to award technical assistance grants to eligible applicants to assist in planning and carrying out local CDBG programs. The purpose of the competition announced by this NOFA is to provide technical assistance to facilitate CDBG-funded activities that help low- and moderate-income youths residing in low- and moderate-income neighborhoods/service areas acquire the skills and knowledge to start and operate successfully small businesses.

HUD has found that many low- and moderate-income youths residing in low- and moderate-income neighborhoods/service areas have the entrepreneurial spirit, but do not have a positive way to channel that spirit. There is a need for programs to encourage the growth of that entrepreneurial spirit, and provide youth with vital skills that can serve as tools with which they can build a better life. Teaching low- and moderate-income youths how to start and fund their own businesses with the assistance of mentors gives youth a reason to hope, instills motivation, and builds self confidence.

HUD believes that the investment of local CDBG dollars, coupled with other public and private sector funds, yields dramatic and long term benefits to youth participating in this project and to the community in general. It is estimated that the cost to society of just one socially delinquent youth is $800,000 in foster care, welfare, housing, remedial education, protective services, criminal justice, lost productivity, medical care and incarceration costs. If just 10% of the youth targeted for participation in this program avoid a life of social delinquency by attaining improved life skills, the savings to society and to each CDBG community is worth the small amount of dollars invested in this program. While this program is geared to increasing small business ownership by low-income youth, program participants will attain increased math and reading comprehension skills, enabling them to become better employees, wiser consumers, and citizens more aware of the workings of the free enterprise system and the business development opportunities it affords.

Successful applicants will be expected to plan and carry out CDBG-assisted local self-employment projects for the benefit of low- and moderate-income youths in low- and moderate-income neighborhoods/service areas. Generally, these local projects should be designed to accomplish the following objectives:

(1) Create or expand a youth entrepreneurship program that will foster the development of youth-owned and operated small and micro businesses.

(2) Recruit and select youths residing in low- and moderate-income neighborhoods/service areas for participation in a youth entrepreneurship program.

(3) Recruit mentors/role models to guide, counsel and motivated low- and moderate-income youths toward becoming self-employed by starting their own small and micro businesses.

(4) Teach youths basic business skills through direct participation and actual experience in owning and operating a business.

(5) Assist youths in getting their products to market, including product service and design, development and marketing.

(6) Encourage private sector capital investment to support youth business development activities and operations.

(7) Develop model approaches that may be duplicated by other CDBG recipients to assist low- and moderate-income youths in becoming small and micro business owners and operators.

(8) Institutionalize a public-private partnership to provide youth with entrepreneurial training and life skills.

The following presents examples of small businesses that low- and moderate-income youth may start:

• Family and personal care: Food cooperatives, food services or catering; barber and beautician services; child- and elder-care services; chauffeur and security services; tutorial services.

• Business services: Small appliance sales and repairs; furniture repair, reconditioning or upholstering; shoe repair; telemarketing; small business administrative and office services; telephone answering services.

• Building management and maintenance services: Apartment cleaning; furniture moving; lawn and grounds care/maintenance; minor building repairs; repainting and plastering; weatherization; trash hauling and waste management and recycling;

• Performing arts: Small bands and combos; entertainment services.

Further, the Secretaries of HUD and the Department of Health and Human Services (HHS) are aware that disincentives to self-employment exist for those living in public or assisted housing or receiving public assistance. The Secretaries have jointly pledged to explore and identify regulations of certain HUD and HHS programs that may hinder self-employment opportunities (e.g., income limitations in the Aid to Families with Dependent Children program, rent ceilings, and asset limitations). To the extent permissible, the Secretaries will seek to grant organizations participating in local self-employment projects funded under this competition waivers of HUD and HHS rules that may restrict the successful operation of these local projects.

2. Eligible Activities

Eligible technical assistance activities are specified in 24 CFR 570.402(d). The technical assistance must be for the provision of skills and knowledge to facilitate the planning, development and administration of CDBG-assisted activities aimed at creating business opportunities for youths. For example:

• Recruiting, screening, and testing low- and moderate-income youths who are promising future business owners;

• Recruiting and training mentors to work with the selected youth entrepreneurs throughout the entire cycle of business start-up and one year of operation;

• Assisting or training the youth entrepreneurs in conducting market research to determine the types of small business products or services and market areas that would be economically feasible;

• Assisting youth entrepreneurs in product or service design, financing and development, and marketing;

• Assisting youth entrepreneurs to identify and secure private sector sources of capital for business start-up and operations;

• Analyzing Federal and State rules and requirements that are disincentives for the youth entrepreneurs to participate in local self-employment projects funded under this competition, and seeking waivers of those rules and requirements;

• Analyzing and securing supportive services (such as day care and transportation), as needed, in order to enable candidates to commit fully the time and energy required to start and operate small businesses; and

• Coordinating activities with all relevant Federal, State, and local agencies.

Applications may focus on the establishment of new local projects, or on the enhancement of existing projects designed to help low- and moderate-income youths to become self-employed. Applications must focus the provision of technical assistance upon activities underway or to be carried out with CDBG funds in low- and moderate-income neighborhoods/service areas, and that would assist low- and moderate-income youth (ages 14–21) to start and operate small or micro businesses. Applications must address how the proposed program of activities will include the participation of the public and private sectors, resulting in the continuation of program activities beyond the life of this award.

3. Eligible Applicants

Eligible applicants are:

(a) Metropolitan cities or urban counties receiving CDBG entitlement funds under 24 CFR part 570, subpart D; and

(b) Units of general local government receiving funds under the HUD-administered Small Cities program, 24 CFR part 570, subpart F; and

(c) Units of general local government receiving funds under the State-administered program for Non-Entitlement Communities, 24 CFR part 570, subpart I; and

(d) Indian tribes and Alaskan native villages receiving assistance under the CDBG program for Indian tribes and Alaskan native villages, 24 CFR part 571; and

(e) Nonprofit organizations, including resident management councils and resident management corporations, and for-profit organizations qualified to provide, to the entities listed in paragraphs (a)–(d) of this section, technical assistance in planning, developing, or administering their CDBG/Title I-funded programs.

4. CDBG Nexus

(a) *Statutory requirements.* Respondents to this NOFA should be alert to two statutory provisions in the community development technical assistance program. The Request for Grant Application (RFGA) will contain specific instructions for satisfying these provisions.

The first statutory provision requires that activities funded under the technical assistance program clearly relate to activities funded under the local CDBG program that create business opportunities for youth. Technical assistance is defined as facilitating skills and knowledge in planning, developing, and administering activities under title I of the Act in entities that may need but do not possess such skills and knowledge.

Accordingly, the RFGA will specify that all applications must include a statement identifying:

- The amount of CDBG funds committed, or planned to be committed, to the activities for which the technical assistance is to be provided;
- The planned date the CDBG funded activities will commence and, where an amendment or other action is needed to carry out the CDBG-funded youth self-employment activities, a statement of intent to effect the needed amendment or other action;
- The specific activities to be undertaken with the CDBG assistance;
- The location of the low- and moderate-income neighborhood/service area from which low- and moderate-income youths will be selected; and
- The relationship between the CDBG activities and the proposed youth self-employment technical assistance activities.

Non-entitlement communities or Indian tribes must commit, either directly or contingent upon an amendment where required pursuant to section I.D. of this NOFA, funds from grants they are currently administering. The statement of commitment (and intent to effect a CDBG program amendment, where appropriate) must be signed by the chief executive officer of the CDBG-funded community or the director of the local CDBG program. For Indian tribes and Alaskan native villages, the chief executive officer of the tribal governing body or tribal council, or the director of the local CDBG program must sign the statement of commitment (and intent to effect a CDBG program amendment, where appropriate).

The second statutory provision requires an entity that is proposing to provide technical assistance within a community, and is not a unit of general local government or an Indian tribe or Alaskan native village, to be designated by that community as a technical assistance provider. Accordingly, the RFGA will specify that applicants that are nonprofit or for-profit organizations must obtain and submit with the application a designation letter from the CDBG-funded community or a tribal resolution as defined in § 571.4(1). The letter/tribal resolution must be signed by the chief executive officer of the community/tribal government, and must certify that the applicant is a technical assistance provider to the community's CDBG program for purposes of the technical assistance to be provided.

An applicant whose statement of CDBG funding commitment or designation letter is pending must provide written evidence that a request for the statement of commitment or letter of designation is awaiting official action and sign-off by the chief executive officer of the community/tribal government or CDBG program director, as appropriate. In this case, the applicant must submit the required letter or statement to HUD within 30 days following the application deadline date. Failure to do so within 30 days following the deadline date will disqualify the applicant.

(b) *Program requirements.* Consistent with the purpose of this NOFA to encourage private sector participation and financing in youth self-employment programs, HUD is limiting the use and amount of CDBG program funds to support business financing as follows:

(i) CDBG funds used to finance the start-up or operations of a small business receiving technical assistance services through this award cannot exceed 49 percent of the total amount borrowed; and

(ii) CDBG funds may be loaned to a business owned by youths not of legal age to enter into contracts only if the business has a sponsor that, in the event of default, will be legally responsible for the payback of any funds loaned.

D. Requirements For CDBG Program Amendments

If the non-entitlement CDBG community or Indian tribe for or in which the proposed technical assistance is to be provided has a CDBG program under which the carrying out of youth self-employment activities is not authorized, the required statement of CDBG funding commitment (described in section I.C.4, Eligible Applicants, of this NOFA) must be conditioned on an amendment of the CDBG program to permit such activities. The statement must include a statement of intent to effect the amendment in accordance with HUD or State requirements, as applicable. In the case of a community funded under the State-administered CDBG program, HUD must also receive, within 30 days after the technical assistance deadline, a letter from the State indicating that it will review and consider the amendment.

E. Submitting Multiple Applications

(1) HUD will accept multiple applications for activities within the same jurisdiction from an eligible applicant, provided the following requirements are met:

(a) A separate application that identifies a neighborhood or specific

service area to be assisted must be submitted for each grant requested; and

(b) There must be a separate commitment of CDBG funds for each application submitted.

(2) Each application will be considered independently and will be rated in accordance with the Ranking Factors in section I.F of this NOFA. Applicants submitting multiple applications for activities within the same jurisdiction are instructed that HUD will fund no more than three applications from any single applicant for activities within the jurisdiction. Applicants requesting more than three awards within a single jurisdiction are required to submit with their applications a letter signed by the chief executive officer of that community/tribal government indicating the priority HUD should apply in breaking any tie between competing applications submitted by the same applicant.

(3) HUD also will not fund more than three applications within the same CDBG jurisdiction. If the chief executive officer or the director of the CDBG program for a community/tribal government has signed a statement of funding commitment for more than three applications submitted by more than one applicant, the chief executive officer must also submit a letter to HUD indicating the priority HUD should apply in breaking any tie between competing applications to fund activities within that jurisdiction.

(a) HUD must receive this letter within 30 days after the deadline for submitting technical assistance applications.

(b) If HUD does not receive this letter within the 30 day period, HUD will make the determination regarding funding priority, if necessary.

F. Ranking Factors

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum number of points for each factor are provided below. The total number of possible points is 100. The program policy criterion for geographic distribution, as identified in 24 CFR 570.402(f)(1)(ii)(A), will be used in reviewing and selecting applications for funding under this NOFA. HUD will apply this policy criterion to fund no more than the three highest ranking applications within any entitlement jurisdiction, small city, Indian tribe or Alaskan native village.

(1) The probable effectiveness of the application in meeting the needs of localities and accomplishing program objectives. (35 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the proposed youth entrepreneurship program activities will meet the needs and CDBG program objectives of the CDBG recipient in carrying out its CDBG program objectives relating to training, job creation and micro and small business development for low- and moderate-income youth residing in the low- and moderate-income neighborhood/service area. (5 points)

(b) The extent to which the application demonstrates an understanding and knowledge of an effective approach to developing a new, or enhancing an existing, youth entrepreneurship program (30 points total). In rating this factor, HUD will consider:

(i) The extent to which the application describes procedures for the recruitment and selection of low- and moderate-income youth participants, particularly homeless youths, youths residing in enterprise zones, minority youths and teenage parents. (6 points)

(ii) The extent to which the application includes mentors/role models in the program, and has from these mentors/role models letters of commitment for participation in the program. (6 points)

(iii) The extent to which the application provides a plan for instructing youths in life skills that can prepare them for business ownership and operation. (7 points)

(iv) The extent to which the application creates goals for the numbers of mentors/role models to be included in the program and youths to be trained. (6 points)

(v) The extent to which he application provides a plan for private sector and other non-federal public participation in the program through in-kind services and cash contributions that are committed to support program activities. (5 points)

(2) The soundness and cost-effectiveness of the proposed approach. (38 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the proposed technical assistance establishes goals for the creation and operation of new, or expansion of existing, micro and small business enterprises during the life of the project and two years beyond. (6 points)

(b) The extent to which the allocation and utilization of staff time are reasonable for the proposed activities and tasks. (5 points)

(c) The extent to which the application identifies and commits available public (other than CDBG) funds to finance operating costs of the youth self-employment program in general and start-up or operating costs of youth-owned enterprises. (3 points)

(d) The extent to which the application identifies and commits available private sector funds to finance operating costs of the youth self-employment program and start-up and operating costs of youth-owned enterprises. (7 points)

(e) The extent to which the application reflects:

(i) A cost-effective plan for accomplishing the program objectives, as evaluated by the cost-per-business developed, the cost-per-youth trained, and the cost for developing the initial program. (4 points)

(ii) The plan for continuing the efforts of the youth entrepreneurship program upon completion of the HUD-funded technical assistance. (4 points)

(f) The extent to which the organizational and management plan reflect that the proposed activities will be well-managed and protected against fraud, waste and other abuses. (3 points)

(g) The extent to which the proposed management plan delineates program staff responsibilities, requires staff accountability, and allows for periodic assessments of the merit and costs of each specific activity or task. (3 points)

(h) The extent to which the work plan presents a clear and feasible schedule for conducting the activities and completing the proposed activities or tasks on time and within budget, and provides procedures for coordinating the activities among all key parties during the term of the project. (3 points)

(3) The capacity of the applicant to carry out the proposed activities in a timely and effective fashion. (17 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the overall organization has experience and familiarity with the CDBG program and the neighborhood/service area in which youths are to be selected to participate in the youth entrepreneurship program. (5 points)

(b) The extent to which the overall organization and the proposed project manager and key staff have experience in developing youth entrepreneur programs, training on business start-ups, and securing venture capital from the private sector for business start-ups. (7 points)

(c) The extent to which the background and experience of the proposed project manager and other key staff are relevant to management and supervision of staff; management and accounting of program funds; and completion of projects on time and within budget. (5 points)

(4) The extent to which the results may be transferable or applicable to other CDBG program participants. (10 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the application demonstrates a sound and feasible plan for collecting, analyzing and presenting data on the program's results. (5 points)

(b) The approach the applicant indicates it would take to inform other CDBG communities of techniques and lessons learned in implementing a youth entrepreneurship program. (5 points)

G. Selection Process

(1) Applications for funding under this NOFA will be awarded points based on the ranking factors contained in section I.F of this NOFA. The applications will then be ranked in order by score, and will be funded in rank order until all available funds have been expended or all the acceptable applicants have been funded. An application must receive at least 60 ranking points, of which at least 15 points must be for factor 1(b), to be given funding consideration. An application not meeting these criteria will be considered unacceptable for funding. If all activities identified in a selected application are not eligible for funding, HUD will fund only those activities that meet the eligibility requirements.

(2) If two or more applications have the same number of points and there are not sufficient funds to fund both, the application with the most points for rating factor 1(b) shall be selected. If there is still a tie, the application with the most points for rating factor 3(b) shall be selected.

(3) If the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD will determine (based upon the proposed activities) the feasibility of funding part of the application and offering a smaller grant to the applicant. If HUD determines that, given the proposed activities, a smaller grant amount would make the activities infeasible, or if the applicant turns down the reduced grant amount, HUD will make the same determination for the next highest ranking application, until all applications within the funding range have been exhausted or available funds have been expended.

(4) If HUD receives an insufficient number of applications to expend all funds, or if funds remain after HUD approves all acceptable applications, HUD may negotiate increased grant awards with applicants approved for funding.

(5) If an applicant submits multiple applications for activities within a single jurisdiction, up to three of those applications may be selected for funding in ranked order. HUD will use the priority listing provided by the applicant under section I.E, Submitting Multiple Applications, of this NOFA as the basis for breaking any tie for the third-highest ranking among qualified applications from a single applicant.

(6) If multiple applications are submitted by more than one applicant for activities within a single jurisdiction, up to three of those applications may be selected for funding in ranked order. HUD will use the priority listing provided by the CDBG recipient community under section I.E. of this NOFA as the basis for breaking any tie for the third-highest ranking among qualified applications within a single jurisdiction.

(7) After all applications have been rated and ranked and awardees have been selected, funds available for this competition that are not used may be made available for other technical assistance competitions.

H. Conditional Grant Approvals

If, under section I.D of this NOFA, a CDBG program amendment is required, a conditional grant will be awarded. The award will be subject to receiving from the chief executive officer of the community/tribal government a certification that the program has been amended to permit the youth self-employment activities for which the CDBG funding commitment was made. The program amendment must have received any required approvals from HUD or the State.

HUD must receive this certification no later than 4 months following notification of the conditional grant award, or the award will be withdrawn.

II. Application Submission Process

A. Obtaining Applications

For an application kit, contact the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits must be in writing, but may be faxed to (202) 708–3363. (This is not a toll-free number.) Please refer to FR–3192, and provide your name, address (including zip code), and telephone number (including area code).

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for receipt, by the deadline date and time specified in the application kit. The application deadline in the application kit 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.

III. Checklist of Application Submission Requirements

A. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the RFGA:

(1) Transmittal letter.

(2) OMB Standard Forms 424 (Request for Federal Assistance) and 424B (Non-Construction Assurances).

(3) Letter of commitment from the mentors/role models participating in the Youth Self-Employment program.

(4) Letters of Funding Commitment from public (other than CDBG) or private sources participating in the Youth Self-Employment program.

(5) Narrative statement addressing the factors for award.

(6) Organization and management plan.

(7) Project budget-by-task.

(8) Letter of CDBG Commitment of Funds signed by the chief executive officer of the CDBG recipient community/tribal government or Director of the CDBG program.

(9) Letter from chief executive officer of the community/tribal government designating the technical assistance provider, where appropriate.

(10) Letter from the State indicating its willingness to review and consider an amendment to the community's CDBG program that would permit youth self-employment activities, where appropriate.

(11) Letter from the chief executive officer of the community/tribal government determining priority order of applications if more than three applications for activities within the

jurisidiction are submitted by a single applicant.

(12) Letter from the chief executive officer of the community/tribal government determining priority order of applications if more than three applications for activities with the jurisdiction are submitted by more than one applicant.

B. Certifications and Exhibits

Applications must also include the following:

(1) Drug-Free Workplace Certification.

(2) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to 42 U.S.C. 5304 (applies only to applicants that are units of general local government).

(3) Certification on HUD Form 2880 disclosing receipt of at least $200,000 in covered assistance during the fiscal year, pursuant to 24 CFR part 12, subpart C.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

V. Other Matters

A. Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide technical assistance that would help low- and moderate-income youths in low- and moderate-income neighborhoods to become self-employed. The notice does not impinge upon the relationships between the Federal government and State or local governments.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The technical assistance to be provided by the funding under this NOFA is expected to help youths residing in low- and moderate-income neighborhoods/service areas become successfully self-employed, which in turn will help them become economically self-sufficient. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

D. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

HUD Responsibilities—Documentation and Public Access

Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (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.)

HUD responsibilities—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 part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

State and Unit of General Local Government Responsibilities—Disclosures

States and units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosure requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act 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 (voice/TDD). (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.

F. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 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 the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

H. The Catalog of Federal Domestic Assistance program number is 14.277.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Dated: April 30, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–10761 Filed 5–7–92; 8:45 am]

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Friday
May 8, 1992

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for Technical Assistance To Aid Low- and Moderate-Income Neighborhood Residents To Become Self-Employed; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3413; FR-3209-N-01]

NOFA for Technical Assistance To Aid Low- and Moderate-Income Neighborhood Residents To Become Self-Employed

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability for FY 1992.

SUMMARY: This NOFA announces funding availability of up to $2,000,000 in Technical Assistance Program grants to support local self-employment projects for low- and moderate-income persons residing in low- and moderate-income neighborhoods or, in the cases of Indian tribes or Alaskan native villages, identified service areas. Up to an additional $2,000,000 in Technical Assistance program funds may be awarded should funds from other technical assistance competitions become available for further awards prior to the end of fiscal year 1992 after selections from those competitions have been made. Applicants may apply for awards up to $200,000. Each award will be funded as a grant for a period of up to 24 months.

The grants must be to provide technical assistance to facilitate activities funded with Community Development Block Grant (CDBG) funds in metropolitan cities or urban counties entitled to receive CDBG funds (Entitlement program), in communities participating in the HUD-administered Small Cities program or in the State-administered program for Non-Entitlement Communities, or in areas participating in the CDBG program for Indian tribes and Alaskan native villages.

In the body of this NOFA is information concerning:

(a) The principal objective of this technical assistance competition, the funding available, eligible applicants and activities, and factors for award;

(b) The application process; and

(c) A checklist of application submission requirements.

DATES: The application due date will be specified in the application kit, and will be firm as to date and hour. Applicants will have at least 45 days to prepare and submit their proposals. The 45-day response period shall begin to run from the first date upon which the application kits are available.

EFFECTIVE DATE: Applications may be requested beginning May 8, 1992.

ADDRESSES: To obtain a copy of the application kit, contact: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits must be in writing, but may be faxed to (202) 708–3363 (this is not a toll-free number). Requests for application kits must include your name, mailing address (including zip code) and telephone number (including area code), and must refer to document FR–3209.

FOR FURTHER INFORMATION CONTACT: Donna Clarke, Office of Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone Number: (202) 708–2035; TDD number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under section 107(b)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5307) (the Act). Program requirements (including eligible activities) applicable to awards made under this competition are contained in 24 CFR 570.400 and 570.402 (the Community Development Technical Assistance Program). (Section 570.402, "Technical assistance awards," was recently revised by a final rule, published at 56 FR 41938 (August 26, 1991). All references in this NOFA to § 570.402 are to this final rule.)

For purposes of this NOFA, "low- and moderate-income person" means, for all applicants except Indian tribes and Alaskan native villages, a person as defined in §§ 570.3(r) and 570.2(m). For Indian tribes and Alaskan native villages, "low- and moderate-income person" means a person as defined in §§ 571.4(h) and 571.4(i).

"Low- and moderate-income neighborhood" means a contiguous area within the entitlement city, urban county or small city where 51 percent or more of the residents are low- and moderate-income, as defined in §§ 570.3(r) and 570.3(m). In the case of a jurisdiction of under 25,000 population, the entire jurisdiction could be considered as a low- and moderate-income neighborhood if 51 percent or more of the residents meet the low- and moderate-income definitions.

For purposes of this NOFA, an eligible Indian tribe or Alaskan native village should substitute the term "identified service area", as defined in § 571.4(g) for all references to low- and moderate-income neighborhoods.

The term "small cities" as used in this document means units of general local government receiving Community Development Block Grant (CDBG) funds under the HUD-administered Small Cities program, pursuant to 24 CFR part 570, subpart F, or the State-administered CDBG Non-Entitlement program, pursuant to 24 CFR part 570, subpart I.

B. Allocation Amount and Form of Award

For this competition, HUD is making available up to $2,000,000 in Technical Assistance program funds to support local self-employment projects for low- and moderate-income persons residing in low- and moderate-income neighborhoods or, in the case of Indian tribes or Alaskan native villages, identified service areas. Up to an additional $2,000,000 in Technical Assistance program funds may be awarded should funds from other technical assistance competitions become available for further award prior to the end of Fiscal Year 1992, after selections from those competitions have been made. Each award will be funded as a grant for an amount of up to $200,000.

The grants must be to provide technical assistance to facilitate activities funded with CDBG funds in metropolitan cities or urban counties entitled to receive CDBG funds (Entitlement program), in communities participating in the HUD-administered Small Cities program or in the State-administered program for Non-Entitlement Communities, or in areas participating in the CDBG program for Indian tribes and Alaskan native villages.

Specific work activities and project budgets will be negotiated at the time of the grant award. Each award will be subject to the requirements of 24 CFR 570.400 and 570.402, 24 CFR part 85 (for local governments and Indian tribes and Alaskan native villages), and OMB Circular A–110 (for non-governmental entities).

c. Description of Technical Assistance Competition

1. Background and Purpose

The primary objective of title I of the Housing and Community Development Act of 1974 (the Act) is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income. Toward this objective, section 107(b)(5) of the Act authorizes the Secretary of HUD to award technical assistance grants to eligible applicants to assist in planning and carrying out local CDBG programs. The purpose of the competition announced by this NOFA is to provide technical assistance to facilitate CDBG-funded activities that help low- and moderate-income persons residing in low- and moderate-income neighborhoods/service areas acquire the skills and knowledge to start and operate successfully small businesses.

HUD has found that there are barriers to the self-employment of low- and moderate-income persons residing in low- and moderate-income neighborhoods/service areas, principal among these being access to sources of capital needed to finance the start-up of the small business. There is a need for a program to provide business skills to interested residents and to encourage private lenders to provide financing through the formation of public/private partnerships. Successful applicants will be expected to plan and carry out CDBG-assisted local self-employment projects for the benefit of low- and moderate-income persons in low- and moderate-income neighborhoods/service areas. Generally, these local projects should be designed to accomplish the following objectives:

(1) Create or expand a self-employment program that will foster the development of small and micro businesses owned and operated by low- and moderate-income neighborhood residents.

(2) Recruit and select low- and moderate-income persons residing in low- and moderate-income neighborhoods/service areas for participation in a self-employment program.

(3) Teach low- and moderate-income neighborhood residents basic business skills through direct participation and actual experience in owning and operating a business.

(4) Assist low- and moderate-income neighborhood residents in getting their products to market, including product service and design, development and marketing.

(5) Increase the capacity of CDBG recipients to identify and secure firm financial commitments of venture capital from the private sector for use by low- and moderate-income neighborhood residents in business development activities and operations.

(6) Develop models that provide new approaches to assist low- and moderate-income neighborhood residents in becoming small and micro business owners and operators, and that may be duplicated by other CDBG recipients.

The following present examples of small businesses that low- and moderate-income neighborhood residents may start:

- Family and personal care: Food cooperatives, food services or catering; barber and beautician services; child- and elder-care services; chauffeur and security services; tutorial services.
- Business services: Small appliance sales and repairs; furniture repair, reconditioning or upholstering; shoe repair; telemarketing; small business administrative and office services; telephone answering services.
- Building management and maintenance services: Apartment cleaning; furniture moving; lawn and grounds care/maintenance; minor building repairs; repainting and plastering; weatherization; trash hauling and waste management and recycling;
- Performing arts: Small bands and combos; entertainment services.

Further, the Secretaries of HUD and the Department of Health and Human Services (HHS) are aware that disincentives to self-employment exist for those living in public or assisted housing or receiving public assistance. The Secretaries have jointly pledged to explore and identify regulations of certain HUD and HHS programs that may hinder self-employment opportunities (e.g., income limitations in the Aid to Families with Dependent Children program, rent ceilings, and asset limitations). To the extent permissible, the Secretaries will seek to grant organizations participating in local self-employment projects funded under this competition waivers of HUD and HHS rules that may restrict the successful operation of these local projects.

2. Eligible Activities

Eligible technical assistance activities are specified in 24 CFR 570.402(d). The technical assistance must be for the provision of skills and knowledge to facilitate the planning, development and administration of CDBG–assisted activities aimed at creating business opportunities for low- and moderate-income neighborhood residents, including the disabled. For example:

- Recruiting, screening, and testing low- and moderate-income neighborhood residents who are promising future business owners;
- Recruiting low- and moderate-income neighborhood residents, and assisting them throughout the entire cycle of business start-up and one year of operation;
- Assisting or training low- and moderate-income neighborhood residents in conducting market research to determine the types of small business products or services and market areas that would be economically feasible;
- Assisting low- and moderate-income neighborhood residents in product or service design, financing and development, and marketing;
- Assisting low- and moderate-income neighborhood residents to identify and secure sources of capital from the private sector for business start-up and operations;
- Analyzing Federal and State rules and requirements that are disincentives for the low- and moderate-income neighborhood residents to participate in local self-employment projects funded under this competition, and seeking waivers of those rules and requirements;
- Analyzing and securing supportive services (such as day care, transportation, readers and interpreters), as needed, in order to enable low- and moderate-income neighborhood residents to commit fully the time and energy required to start and operate small businesses; and
- Coordinating activities with all relevant Federal, State, and local agencies.
- Applications may focus on the establishment of new local projects, or on the enhancement of existing projects designed to help low- and moderate-income neighborhood residents to become self-employed. Applications must focus the provision of technical assistance upon activities underway or to be carried out with CDBG funds in low- and moderate-income neighborhoods/service areas, and that would assist low- and moderate-income neighborhood residents to start and operate small or micro businesses.

3. Eligible Applicants

Eligible applicants are:

(a) Metropolitan cities or urban counties receiving CDBG entitlement funds under 24 CFR part 570, subpart D; and

(b) Units of general local government receiving funds under the HUD–

administered Small Cities program, 24 CFR part 570, subpart F; and

(c) Units of general local government receiving funds under the State-administered program for Non-Entitlement Communities, 24 CFR part 570, subpart I; and

(d) Indian tribes and Alaskan native villages receiving assistance under the CDBG Program for Indian tribes and Alaskan native villages, 24 CFR part 571; and

(e) Nonprofit organizations, including resident management councils and resident management corporations, and for-profit organizations qualified to provide, to the entities listed in paragraphs (a)-(d) of this section, technical assistance in planning, developing or administering their CDBG/Title I-funded programs.

4. CDBG Nexus

(a) *Statutory Requirements.* Respondents to this NOFA should be alert to two statutory provisions in the community development technical assistance program. The Request for Grant Application (RFGA) will contain specific instructions for satisfying these provisions.

The first statutory provision requires that activities funded under the technical assistance program clearly relate to activities funded under the local CDBG program that create business opportunities for low- and moderate-income neighborhood residents. Technical assistance is defined as facilitating skills and knowledge in planning, developing, and administering activities under title I of the Act in entities that may need but do not possess such skills and knowledge.

Accordingly, the RFGA will specify that all applications must include a statement identifying:

- The amount of CDBG funds committed, or planned to be committed, to the activities for which the technical assistance is to be provided;
- The planned date the CDBG-funded activities will commence and, where an amendment or other action is needed to carry out the CDBG-funded self-employment activities, a statement of intent to effect the needed amendment or other action;
- The specific activities to be undertaken with the CDBG assistance;
- The location of the low- and moderate-income neighborhood/service area from which low- and moderate-income neighborhood residents will be selected; and
- The relationship between the CDBG activities and the proposed self-employment technical assistance activities.

Non-entitlement communities and Indian tribes must commit, either directly or contingent upon an amendment where required under section I.D. of this NOFA, funds from grants they are currently administering. The statement of commitment (and intent to effect a CDBG program amendment, where appropriate) must be signed by the chief executive officer of the CDBG-funded community or, as defined in § 571.4(b), the Indian tribe or Alaskan native village, or by the director of the local CDBG program.

The second statutory provision requires an entity that is proposing to provide technical assistance within a community, and is not a unit of general local government or an Indian tribe or Alaskan native village, to be designated by that community as a technical assistance provider. Accordingly, the RFGA will specify that applicants that are nonprofit or for-profit organizations must obtain and submit with the application a designation letter from the CDBG-funded community or a tribal resolution as defined in § 571.4(l). The letter/tribal resolution must be signed by the chief executive officer of the community/tribal government, and must certify that the applicant is a technical assistance provider to the community's CDBG program for purposes of the technical assistance to be provided.

An applicant whose statement of CDBG funding commitment or designation letter is pending must provide written evidence that a request for the statement of commitment or letter of designation is awaiting official action and sign-off by the chief executive officer of the community/tribal government or the director of the CDBG program, as appropriate. In this case, the applicant must submit the required letter or statement to HUD within 30 days following the application deadline date. Failure to do so within 30 days following the deadline date will disqualify the applicant.

(b) *Program Requirements.* Consistent with the purposes of this NOFA to encourage private sector participation and financing in resident self-employment programs, HUD is limiting the use and amount of CDBG program funds to support business financing as follows:

(i) CDBG funds used to finance the start-up or operations of a small business receiving technical assistance services through this award cannot exceed 49 percent of the total amount borrowed; and

(ii) CDBG funds may be loaned to a business owned by persons not of legal age to enter into contracts only if the business has a sponsor that, in the event of default, will be legally responsible for the payback of any funds loaned to the business.

D. Requirements for CDBG Program Amendments

If the non-entitlement CDBG community or Indian tribe for or in which the technical assistance is to be provided has a CDBG program under which the carrying out of self-employment activities is not authorized, the required statement of CDBG funding commitment (described in section I.C.4, CDBG Nexus, of this NOFA) must be conditioned on an amendment of the CDBG program to permit these activities. The statement must include a statement of intent to effect the amendment in accordance with HUD or State requirements, as applicable. In the case of a community funded under the State-administered CDBG program, HUD must also receive, within 30 days after the technical assistance deadline, a letter from the State indicating that it will review and consider the amendment.

E. Ranking Factors

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum number of points for each factor are provided below. The total number of possible points is 100. The program policy criterion for geographic distribution, as identified in 24 CFR 570.402(f)(1)(ii)(A), will be used in reviewing and selecting applications for funding under this NOFA.

(1) The probable effectiveness of the application in meeting the needs of localities and accomplishing program objectives. (30 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the proposed self-employment program activities will meet the needs of the CDBG recipient and carry out its CDBG program objectives relating to training, job creation and micro and small business development for low- and moderate-income persons residing in the low- and moderate-income neighborhood/service area. (5 points)

(b) The extent to which the application demonstrates an understanding and knowledge of an effective approach to developing a new, or enhancing an existing, self-employment program (25 points total). In rating this factor, HUD will consider:

(i) The extent to which the application describes procedures for the recruitment and selection of low- and moderate-income persons, particularly those persons who are currently unemployed,

homeless, disabled, residing in or adjacent to enterprise zones, or are members of minority groups. (5 points)

(ii) The extent to which the application provides a plan for private sector and other governmental participation in the program, such as through in-kind services and cash contributions that are committed to the program. (5 points)

(iii) The extent to which the application provides a plan for instructing low- and moderate-income neighborhood residents in preparing for business ownership and operation. (10 points)

(iv) The extent to which the applicant creates goals for the numbers of low- and moderate-income persons to be trained and businesses to be established during the life of the project. (5 points)

(2) The soundness and cost-effectiveness of the proposed approach. (40 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the proposed technical assistance establishes goals for the creation and operation of new, or expansion of existing, micro and small business enterprises owned and operated by low- and moderate-income persons during the life of the project and two years beyond. (8 points)

(b) The extent to which the allocation and utilization of staff time are reasonable for the proposed activities and tasks. (5 points)

(c) The extent to which the application identifies and commits available public (other than CDBG) funds to finance start-up and operating costs of the micro and small businesses and the self-employment program. (5 points)

(d) The extent to which the application identifies and commits available private sector funds to finance start-up and operating costs of the micro and small businesses and the self-employment program. (10 points)

(e) The extent to which the application represents a cost-effective plan for accomplishing the program objectives, as evaluated by the cost-per-business developed, the cost-per-low- and moderate-income person trained, the cost for developing the initial program, and the cost for continuing the efforts of the program upon completion of the HUD-funded technical assistance. (3 points)

(f) The extent to which the organizational and management plan reflects that the proposed activities will be well-managed and protected against fraud, waste and other abuses. (3 points)

(g) The extent to which the proposed organization and management plan delineates program staff responsibilities, requires staff accountability, and allows for periodic assessments of the merit and cost of each specific activity or task. (3 points)

(h) The extent to which the work plan presents a clear and feasible schedule for conducting the activities and completing the proposed activities or tasks on time and within budget, and provides procedures for coordinating the activities among all key parties during the term of the project. (3 points)

(3) The capacity of the applicant to carry out the proposed activities in a timely and effective fashion. (25 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the overall organization has experience and familiarity with the CDBG program and the neighborhood/service area from which the low- and moderate-income persons are to be selected to participate in the self-employment program. (5 points)

(b) The extent to which the overall organization and the proposed project manager and key staff have experience in training on business development, including market analysis, site selection, business management, and securing venture capital from private sector sources for business start-ups and expansions. (10 points)

(c) The extent to which the background and experience of the proposed project manager and other key staff are relevant to management and supervision of staff, management and accounting of program funds, and completing projects on time and within budget. (7 points)

(d) The extent to which the proposed project manager and key staff have demonstrated knowledge and experience in providing economic and business development technical assistance to diverse populations. (3 points)

(4) The extent to which the results may be transferable or applicable to other CDBG program participants. (5 Total Points.) In rating this factor, HUD will consider:

(a) The extent to which the application demonstrates a sound and feasible plan for collecting, analyzing and presenting data on the program's results. (3 points)

(b) The approach the applicant indicates it would take to inform other CDBG communities of techniques and lessons learned in implementing a self-employment program. (2 points)

F. Selection Process

(1) Applications for funding under this NOFA will be awarded points based on the ranking factors contained in section I.E of this NOFA. The applications will then be ranked in order by score, and will be funded in rank order until all available funds have been expended or all acceptable applicants have been funded. An application must receive at least 60 ranking points, of which at least 15 points must be for factor 1(b), to be given funding consideration. An application not meeting these criteria will be considered unacceptable for funding. If all activities identified in a selected application are not eligible for funding, HUD will fund only those activities that meet the eligibility requirements.

(2) If two or more applications have the same number of points and there are not sufficient funds to fund both, the application with the most points for rating factor 1(b) shall be selected. If there is still a tie, the application with the most points for rating factor 3(b) shall be selected.

(3) If the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD will determine (based upon the proposed activities) the feasibility of funding part of the application and offering a smaller grant to the applicant. If HUD determines that, given the proposed activities, a smaller grant amount would make the activities infeasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application, until all applications within the funding range have been exhausted or available funds have been expended.

(4) If HUD receives an insufficient number of applications to expend all funds, or if funds remain after HUD approves all acceptable applications, HUD may negotiate increased grant awards with applicants approved for funding.

(5) After all applications have been rated and ranked and awardees have been selected, funds available for this competition that are not used may be made available for other technical assistance competitions.

G. Conditional Grant Approvals

If, under section I.D of this NOFA, a CDBG program amendment is required, a conditional grant will be awarded. The award will be subject to receiving from the chief executive officer of the community/tribal government a certification that the program has been amended to permit the self-employment activities for which the CDBG funding commitment was made. The program amendment must have received any

required approvals from HUD or the State.

HUD must receive this certification no later than 4 months following notification of the conditional grant award, or the award will be withdrawn.

II. Application Submission Process

A. Obtaining Applications

For an application kit, contact the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits must be in writing, but may be faxed to (202) 708–3363. (This is not a toll-free number.) Please refer to FR–3209, and provide your name, address (including zip code) and telephone number (including area code).

B. Submitting Applications and Deadline Date

Applications for funding under this NOFA must be complete and must be physically received in the place designated in the application kit for receipt, by the deadline date and time specified in the application kit. The application deadline in the application kit 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.

III. Checklist of Application Submission Requirements

A. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the RFGA:

(1) Transmittal letter.

(2) OMB Standard Forms 424 (Request for Federal Assistance) and 424B (Non-Construction Assurances).

(3) Letters of commitment of in-kind services, cash contributions, or funds for business start-up financing from public (other than CDBG sources) or private sources participating in the self-employment program.

(4) Narrative statement addressing the factors for award.

(5) Organization and management plan.

(6) Project budget-by-task.

(7) Letter of CDBG Commitment of Funds signed by the chief executive officer of the CDBG recipient community/tribal government or director of the CDBG program.

(8) Letter from chief executive officer of the community/tribal government designating the technical assistance provider, where appropriate.

(9) Letter from the State indicating its willingness to review and consider an amendment to the community's CDBG program that would permit self-employment activities, where appropriate.

B. Certifications and Exhibits

Applications must also include the following:

(1) Drug-Free Workplace Certification.

(2) Certification prohibiting excessive force against nonviolent civil rights demonstrators, pursuant to 42 U.S. C. 5304 (applies only to applicants that are units of general local government).

(3) Certification on HUD Form 2880 disclosing receipt of at least $200,000 in covered assistance during the fiscal year, pursuant to 24 CFR part 12, subpart C.

IV. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

V. Other Matters

A. Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of technical assistance and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide technical assistance that would help low- and moderate-income neighborhood residents to become self-employed. The notice does not impinge upon the relationships between the Federal government and State or local governments.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The technical assistance to be provided by the funding under this NOFA is expected to help low- and moderate-income persons residing in low- and moderate-income neighborhoods/service areas become successfully self-employed, which in turn will help them become economically self-sufficient. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

D. Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

HUD Responsibilities—Documentation and Public Access

Pursuant to section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (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.)

HUD Responsibilities—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 part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

State and Unit of General Local Government Responsibilities Disclosures

States and units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each State and unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on these disclosures requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act 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 an 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 (voice/TDD). (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.

F. Prohibition Against Lobbying of HUD Personnel

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 13 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 the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

H. The Catalog of Federal Domestic Assistance Program number is 14.227.

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d); 24 CFR 570.402.

Dated: April 30, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–10762 Filed 5–7–92; 8:45 am]

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federal register

Friday
May 8, 1992

Part VI

Environmental Protection Agency

40 CFR Parts 117, 302, and 355
Reportable Quantity Adjustments for Lead Metal, Lead Compounds, Lead-Containing Hazardous Wastes, and Methyl Isocyanate; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 117, 302, and 355

[SWH-FRL-39837]

Reportable Quantity Adjustments for Lead Metal, Lead Compounds, Lead-Containing Hazardous Wastes, and Methyl Isocyanate

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust to 10 pounds the reportable quantities (RQs) for lead metal, 13 lead compounds, 15 waste streams listed under the Resource Conservation and Recovery Act (RCRA) that contain lead, and RCRA characteristic wastes that fail the Toxicity Characteristic Leaching Procedure ("TC wastes") based on their lead constituents. In addition, the rule proposes to adjust the RQ for methyl isocyanate (MIC) to 100 pounds. Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires the Administrator of the U.S. Environmental Protection Agency (EPA) to adjust RQs for CERCLA hazardous substances, including the 31 substances in this rule. Under CERCLA section 103, when a hazardous substance is released into the environment in an amount equal to or greater than its RQ, the person in charge of the vessel or facility from which the release occurred must report immediately to the National Response Center. The RQs for the hazardous substances proposed to be adjusted in today's rule would provide the Agency with information concerning releases of lead metal, lead compounds, lead-containing hazardous wastes, and MIC into the environment at levels that correspond to the relative hazards posed by exposure to these substances.

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

ADDRESSES: *Comments:* Comments should be submitted in triplicate to: Emergency Response Division, Attention: Superfund Docket Clerk, Docket Number 102 RQ–31L, Superfund Docket Room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Docket: Copies of materials relevant to this rulemaking are contained in room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102 RQ–31L). The docket is available for inpection between hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 1–202/260–3046. The public may copy up to 100 pages from any regulatory docket at no cost. For 101 pages to more, copies will cost the public $.15 per page.

Release Notification: The toll-free telephone number of the National Response Center is 1–800/425–8802; in the Washington, DC metropolitan area, the number is 1–202/267–2675.

FOR FURTHER INFORMATION CONTACT: Ms. Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (OS–210), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; or the RCRA/Superfund Hotline at 1–800/425–9346 (in the Washington, DC metropolitan area, contact 703/920–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 1–800/553–7672 (in Washington, DC metropolitan area, contact 703/486–3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Introduction

A. Statutory Authority

Under section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499), a reportable quantity (RQ) of one pound is established for releases of hazardous substances, except for hazardous substances whose RQs were established pursuant to section 311 of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the Administrator of the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust all of these RQs by regulation.

Under CERCLA section 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

In addition to the reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as title III of SARA, requires owners or operators of certain facilities to report releases of extremely hazardous substances (EHSs) and CERCLA hazardous substances to State and local authorities.[1-4] EPCRA section 304 notification must be given immediately after releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the

[1-4] On January 23, 1989, EPA published a proprosed rule to designate all non-CERCLA EHSs as CERCLA hazardous substances (54 FR 3388). On August 30, 1989, EPA published a proposed rule to adjust the RQs for most of these substances (54 FR 35988).

release. These notification requirements apply only to releases that have potential for off-site exposure and that are from facilities at which a "hazardous chemical" (defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311(e) of EPCRA) is produced, used, or stored.

Section 109 of CERCLA and section 325 of EPCRA authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQ's. Section 103 of CERCLA authorizes EPA to seek criminal penalties for failure to make a notification pursuant to CERCLA section 103 or for submitting false or misleading information in a notification.

B. Background of this Rulemaking

1. Previous Proposed and Final RQ Adjustments

Adjustments are proposed for three categories of RQs in this rule: (1) Statutory RQs; (2) RQs previously proposed to be adjusted but not yet finalized; and (3) RQs adjusted in previous final rules. All of these RQs will be superseded to the extent that the adjustments proposed in this rule become final and effective. The chronology of the previous proposed and final RQ adjustments is summarized briefly below and is depicted in Table 1.

TABLE 1.—PREVIOUS PROPOSED AND FINAL RQS FOR HAZARDOUS SUBSTANCES WHOSE RQS ARE PROPOSED TO BE ADJUSTED TODAY

Hazardous substance	Statutory RQ	5/25/83[a] (proposed)	4/4/85[b] (proposed)	9/29/86[c] (final)	3/16/87[d] (proposed)	3/2/88[e] (proposed)	8/14/89[f] (final)	8/30/89[g] (proposed)	Today (proposed)
Lead metal	1		5000			100			10
Lead acetate	5000				10	100			10
Lead chloride	5000		100	100					10
Lead fluoborate	5000		100	100					10
Lead fluoride	5000		100	100					10
Lead iodide	5000		100	100					10
Lead nitrate	5000		100	100					10
Lead phosphate	1				10	100			10
Lead stearate	5000		5000	5000		100			10
Lead subacetate	1				100		100		10
Lead sulfate	5000		100	100					10
Lead sulfide	5000		100	5000		100			10
Lead thiocyanate	5000		100	100					10
Methyl isocyanate	1	100							100
Tetramethyl lead	1							100	10
K002	1				1				10
K003	1				1				10
K005	1				1				10
K046	1		100	100					10
K048	1				1				10
K049	1				1				10
K051	1				1				10
K061	1				1				10
K062	1				1				10
K064	1								10
K065	1								10
K066	1								10
K069	1				1				10
K086	1				1				10
K100	1				1				10
Lead-containing TC wastes	1				100				10

[a] 48 FR 23565
[b] 50 FR 13514
[c] 51 FR 34534
[d] 52 FR 8140
[e] 53 FR 6762
[f] 54 FR 33426
[g] 54 FR 35988.

EPA initially proposed to adjust the statutory one-pound RQ for methyl isocyanate (MIC) to 100 pounds in the May 25, 1983 notice of proposed rulemaking (NPRM) (48 FR 23565). After the December 3, 1984 release of MIC in Bhopal, India and the resultant loss of human life, EPA withdrew this proposed RQ adjustment in the April 4, 1985 final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC. The Agency is proposing an adjusted RQ of 100 pounds for MIC in today's rulemaking based on an evaluation of reproductive and respiratory effects under the Agency's chronic toxicity criterion and the application of the secondary RQ adjustment criteria of biodegradation, hydrolysis, and photolysis (see Section II.D).

Eight of the substances whose RQs are being proposed for adjustment today (lead chloride, lead fluoborate, lead fluoride, lead iodide, lead nitrate, lead sulfate, lead thiocyanate, and waste stream K046 [5]) received final RQ adjustments of 100 pounds based on their chronic toxicity in the September 29, 1986 final rule (51 FR 34534).

In an NPRM published on March 16, 1987 (52 FR 8140), EPA proposed to adjust the statutory RQ for lead subacetate (one pound) to 100 pounds based on chronic toxicity; this 100-pound proposed RQ was promulgated on August 14, 1989 (54 FR 33426).

In the same NPRM, EPA proposed to adjust the statutory RQs for lead acetate

[5] Industrial sources and constituents of all RCRA waste streams for which RQs are being adjusted today are described in Table 302.4 of this proposed rule.

(5000 pounds) and lead phosphate (one pound) to 10 pounds based on potential carcinogenicity. EPA also proposed one-pound RQ adjustments for 11 lead-containing waste streams (K002, K003, K005, K048, K049, K051, K061, K062, K069, K086, and K100). The RQs for these 11 waste streams were proposed at one pound on March 16, 1987 because at that time: (1) The RQs for hexavalent chromium compounds (e.g., calcium chromate), which are constituents of each of these waste streams, were being proposed at one pound; and (2) the existing RQ for lead metal was one pound.[6] The RQ for hexavalent chromium compounds was changed to 10 pounds in the August 14, 1989 final rule, based on public comments received on the March 16, 1987 NPRM.

An RQ of 100 pounds was proposed in the March 16, 1987 NPRM for RCRA characteristic wastes that were toxic by virtue of their lead constituents. Since the March 16, 1987 NPRM, the procedure for determining the toxicity of RCRA characteristic wastes has been changed from the extraction procedure (EP) to the toxicity characteristic leaching procedure (TCLP) (55 FR 11798, March 29, 1990).[7] RCRA characteristic wastes that fail the TCLP test are referred to as TC wastes. RQs for the metal constituents of TC wastes are based on the RQs for soluble salts of the metal in question (52 FR 8148, March 16, 1987). The reason for using the RQ for the soluble salts, rather than the RQ for the metal itself, is that the TCLP (similar to the earlier extraction procedure) tests for the presence of the soluble salts.

In the March 2, 1988 NPRM (53 FR 6762), EPA reproposed 100-pound RQ adjustments for lead acetate and lead phosphate. In the same NPRM, EPA reproposed the RQ adjustment for lead metal at 100 pounds, and proposed RQ readjustments of 100 pounds for lead stearate and lead sulfide.[8] The RQ adjustments proposed in the March 2, 1988 NPRM were based on the Human Health Assessment Group's (HHAG's) re-evaluation of the potential carcinogenicity of lead metal and lead compounds and its determination that these hazardous substances were weight-of-evidence Group B2 potential carcinogens.

Three lead-containing waste streams (K064, K065, and K066) were listed as hazardous under RCRA section 3001 on September 3, 1988 (53 FR 35412).[9]

Because the RQs for these waste streams were not proposed for adjustment, the statutory one-pound RQ remained applicable.

Finally, EPA proposed to designate tetramethyl lead as a CERCLA hazardous substance on January 23, 1989 (54 FR 3388) and to adjust its statutory RQ from one pound to 100 pounds on August 30, 1989 (54 FR 35988). Although the rule to designate tetramethyl lead as a hazardous substance has not yet been finalized, EPA has decided to propose a 10-pound adjusted RQ for tetramethyl lead in today's rule, together with the 10-pound adjusted RQs for lead metal and the other lead compounds. Proposing an adjusted RQ for tetramethyl lead in today's rule prior to promulgation of the rule designating tetramethyl lead as a CERCLA hazardous substance is similar to the Agency's previous proposal to adjust the RQ for tetramethyl lead on August 30, 1989, based on the January 23, 1989 proposed designation of this substance.

2. Developments Leading to Today's Proposed Rule

On November 30, 1988, at the request of outside parties and as part of a broader review of EPA's scientific policy regarding lead, EPA's Science Advisory Board and Clean Air Scientific Advisory Committee formed a Joint Study Group. This Group reviewed the HHAG determination that lead metal and lead compounds are weight-of-evidence Group B2 potential carcinogens. In the August 14, 1989 final rule to adjust RQs for potential carcinogens (54 FR 33435), EPA stated that until the Joint Study Group review of the HHAG determination was complete, it would withhold final RQ adjustments for lead metal, lead acetate, lead phosphate, lead stearate, and lead sulfide that were proposed to be adjusted in the March 2, 1988 NPRM, and for 11 lead-containing waste streams proposed to be adjusted in the March 16, 1987 NPRM. In December 1989, the Joint Study Group issued a report containing its findings and recommendations.[10] The Joint Study Group supported the HHAG's evaluation of the potential carcinogenicity of lead metal and lead compounds and, in particular, its determination that these hazardous substances are weight-of-evidence Group B2 potential carcinogens.[11]

The Joint Study Group also recommended that EPA reassess its regulatory strategy concerning lead to emphasize the prevention of adverse neurotoxic effects in children. Recent available data show that: (1) A correlation exists between exposure to lead (measured as blood lead levels) and neurotoxic effects; and (2) children are particularly susceptible to these effects. For a discussion of the studies that form the basis for these conclusions, see Section II.C.1 of this preamble.

One aspect of the Agency's methodology for adjusting the RQs of CERCLA hazardous substances, the chronic toxicity criterion, is designed to consider the neurotoxicity of these substances. However, when this criterion was last applied to lead metal and lead compounds in 1983, the extent of absorption of lead was not sufficiently known. Therefore, an accurate relationship between environmental lead levels and toxic concentrations within the body could not be established.

Since 1983, a number of studies have determined that various forms of lead are absorbed through oral, dermal, and inhalation routes, and have established a linear relationship between dietary lead intake and blood lead levels in

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[6] As the Agency has stated (54 FR 33440, August 14, 1989), the RQ for a hazardous waste stream is the lowest RQ of any of its constituents. One pound is the lowest possible RQ level. Although a 5000-pound RQ was proposed for lead metal in the April 4, 1985 proposed rule, the statutory one-pound RQ for lead metal was retained in the September 29, 1986 final rule.

[7] This change applies to all RCRA characteristic wastes, including those that are toxic by virtue of their lead constituents.

[8] The statutory RQ for lead metal (one pound) was proposed to be adjusted to 5000 pounds in an April 4, 1985 NPRM (50 FR 13514). Lead stearate and lead sulfide received RQ adjustments of 5000 pounds in the September 29, 1986 final rule (51 FR 34534).

[9] The listing of waste streams K064, K065, and K066 as hazardous under RCRA was remanded to EPA for further explanation of the specific studies that support the Agency's decision to list these wastes. See *American Mining Congress v. U.S. Environmental Protection Agency*, No. 88-1835 (D.C. Cir., July 10, 1990). The Agency is documenting the technical evidence to support the listing of these three waste streams as RCRA hazardous wastes and will include such evidence in a future **Federal Register** notice.

[10] U.S. EPA, Report of the Joint Study Group on Lead; Review of Lead Carcinogenicity and EPA Scientific Policy on Lead (EPA-SAB-EHC-90-001), December 1989, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[11] In response to comments from the Joint Study Group, HHAG is finalizing its report, the Evaluation of the Potential Carcinogenicity of Lead and Lead Compounds, that documents the data supporting the B2 classification. The Joint Study Group also supported the HHAG's overall analysis of the potency factor for lead and lead compounds conducted for the March 2, 1988 NPRM, which indicates that lead and lead compounds have a low potency and therefore should be assigned to potency Group 3. This potency group assignment results in a low hazard ranking and a 100-pound primary criteria RQ for lead and lead compounds based on potential carcinogenicity. It is important to note that today's proposed lead-related RQ adjustments are not based on potential carcinogenicity or on the 1991 HHAG Report; rather, they are based on the neurotoxic effects of lead in children.

children. Based on one of these studies,[12] the Agency has estimated that 16 percent of environmental lead to which an individual child is exposed is absorbed into the child's bloodstream. Taken together with the evidence from studies conducted prior to 1983, the results of the more recent studies show that there is a relationship between children exhibiting symptoms typical of lead exposure and their blood lead levels, and that children may be at greater risk of neurological damage than adults when exposed to lead metal and lead compounds because their physiological defense mechanisms are not fully developed. These studies have led to the general acceptance in the scientific community of using blood lead levels to determine prior lead exposure.[13]

EPA has re-applied its chronic toxicity criterion to lead metal, lead compounds, and lead-containing hazardous wastes using the more recent studies on lead's neurotoxic effects in children. As a result, EPA today is proposing 10-pound RQ adjustments for lead metal and 13 lead compounds based on chronic toxicity. The Agency also is proposing adjusted RQs of 10 pounds for 15 lead-containing waste streams: K002, K003, K005, K046, K048, K049, K051, K061, K062, K064, K065, K066, K069, K086, and K100.[14] The lowest RQ of the constituents of each of these waste streams (which determines the RQs for the waste streams themselves) is the 10-pound proposed RQ for lead metal and lead compounds.[15] In addition, the RQ for TC wastes that are toxic by virtue of their lead constituents also is being proposed at 10 pounds because 10-pound RQs are being proposed today for soluble lead salts, such as lead acetate (and for other lead compounds).

The proposed adjusted RQs for lead metal, lead compounds, and lead-containing hazardous wastes will provide the Agency with information concerning releases of lead into the environment at levels that correspond to the relative hazards posed by exposure to these hazardous substances. Upon notification of such releases, the Agency will be able to evaluate the need for a Federal removal or remedial action consistent with its strategy to reduce overall environmental exposure to lead.

Today's proposed RQ adjustments would, when promulgated, amend Table 302.4 of 40 CFR 302.4, which lists RQs for CERCLA hazardous substances, and Appendices A and B of 40 CFR part 355, which list CERCLA RQs for EHSs. In addition, some of today's proposed RQ adjustments would amend Table 117.3 of 40 CFR 117.3, which lists RQs established for hazardous substances under section 311(b)(4) of the CWA.

3. Agency Efforts to Reduce Exposure to Lead

This proposed rulemaking is an integral part of an EPA strategy to reduce environmental exposure to lead. The goal of this strategy is to reduce lead exposures to the fullest extent possible, with particular emphasis on decreasing health risks to children, who are particularly sensitive to lead exposure (see Section II.C.1).

Specifically, the Agency intends to reduce the amount of lead introduced into the environment by developing methods to identify geographic "hot spots," implementing a lead pollution prevention program using regulatory mechanisms, minimizing lead pollution through traditional pollution control devices, developing and transferring abatement technology to lead pollution sources, and ensuring the availability of environmentally sound recycling of lead.

To date, the Agency has made progress toward reducing environmental exposure to lead. There have been large reductions in concentrations of lead in air and in food products since the late 1970's, primarily due to the phase-down of the use of lead in gasoline. While data are not available on changes to concentrations of lead in soil over time, it is likely that reductions in soil deposition have occurred as air emissions have declined.[16]

Section II of this preamble discusses the rationale for RQ adjustments in general, describes the methodology used in adjusting RQs from their statutory levels, and explains the specific RQ adjustments proposed in this rulemaking. Section III of this preamble addresses RQ adjustments being proposed today under section 311 of the CWA. Section IV describes the adjustment to the RQs for two EHSs (tetramethyl lead and MIC) in 40 CFR part 355 that are proposed in today's rule. Section V provides a summary of the analyses supporting this proposed rule.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency is proposing to adjust RQs based on specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance into the environment. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors, assessed on a case-by-case basis, include but are not limited to: (1) The location of the release; (2) its proximity to drinking water supplies or other valuable resources; and (3) the likelihood of exposure or injury to nearby populations. The RQ adjustments proposed today will, if promulgated, enable the Agency to focus its resources on those releases that are more likely to pose potential threats to public health or welfare or the environment. These RQ adjustments also will relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are less likely to pose such threats.

B. Summary of the Reportable Quantity Adjustment Methodology

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting the RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance.[17] The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity.

Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ value of 1, 10, 100, 1000, or 5000

[12] Ryu, J.E., E.E. Ziegler, S.E. Nelson, and S.J. Fomon. 1983. Dietary Intake of Lead and Blood Lead Concentration in Early Infancy. Am. J. Dis., Child 137:886.

[13] U.S. EPA. 1986. Air Quality Criteria for Lead. See this document for a summary of all data concerning the effects of lead exposure on neurological development. For further information on the effects of low blood lead levels on the neurological development of children, see Exhibit 3-4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection at Room M2427, U.S. EPA, 401 M Street SW., Washington DC 20460.

[14] The method for determining when an RQ or more of a hazardous substance in a mixture or solution has been released is codified at 40 CFR 302.6(b).

[15] In addition, some of these waste streams contain cadmium and hexavalent chromium, which have 10-pound RQs.

[16] U.S. EPA. 1990. U.S. Environmental Protection Agency Strategy for Reducing Lead Exposures. Office of Pesticides and Toxic Substances.

[17] A different methodology applies for assigning adjusted RQs to radionuclides (see 54 FR 22524, May 24, 1989).

pounds.[18] These RQ levels were originally established pursuant to CWA section 311 (see 40 CFR part 117 and 44 FR 50776, August 29, 1979). The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

The 10-pound RQs being proposed today for lead metal, lead compounds, and lead-containing hazardous wastes are based on the tentative RQs these hazardous substances received when evaluated for chronic toxicity.[19] The 100-pound RQ proposed for MIC is based on the chronic toxicity RQ of 10 pounds and the susceptibility of MIC to certain degradative processes. Under the methodology for developing chronic toxicity tentative RQs, each substance is first assigned two rating values, one based on the dose that causes a particular effect, and one based on the severity of the effect. The dose rating values range from one to 10, with 10 representing the most toxic substances. The effect rating values also range from one to 10, with 10 representing the most severe effect. The product of the dose and effect rating values for the substance yields a composite score between one and 100, which is directly proportional to the toxicity of the substance. Chronic toxicity tentative RQs are then assigned on the basis of the composite score as shown in Table 2:

TABLE 2.—RELATIONSHIP OF COMPOSITE SCORES TO CHRONIC TOXICITY TENTATIVE RQS

Composite score	RQ (lbs.)
81–100	1
41–80	10
21–40	100
6–20	1,000
1–5	5,000

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP).[20] If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ (as determined by the primary RQ adjustment criteria), is generally raised one level.[21] This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

After hazardous substances are evaluated for the primary and secondary criteria, EPA has proposed that substances be further evaluated by applying the methodology for developing threshold planning quantities (TPQs) pursuant to EPCRA section 302 using the following steps.[22] First, the screening criteria used to identify EHSs (see 51 FR 41570, November 17, 1986) would be applied to the hazardous substances being evaluated. Second, a level of concern would be established for each hazardous substance that meets the screening criteria.[23] Third, the dispersion potential of each of these hazardous substances would be assessed by considering its physical state and volatility. The level of concern and dispersion potential would be combined to produce an index value, and the screened substances would be ranked according to this index value. Tentative RQs would be assigned to substances using a table of index value ranges (see 54 FR 35990). If the tentative RQ assigned in this way is lower than the primary and (if applicable) secondary criteria RQ, this tentative RQ resulting from application of the TPQ criteria would become the adjusted RQ.[24] Because EPA has determined that application of the TPQ criteria to the substances evaluated in today's proposed rule does not affect any of the proposed RQs (see Section II.C.2 and Section II.D), the content of this proposed rule would be the same whether the current RQ adjustment methodology, or the proposed expanded methodology, is used.

C. Basis of Proposed RQ Adjustments for Lead Metal, Lead Compounds, and Lead-Containing Hazardous Wastes

1. Summary of Data on Neurotoxic Effects of Lead in Children

As mentioned in Section I.B.2 of this preamble, available data show a clear relationship between blood lead levels in children and a variety of neurotoxic effects.[25] Children may be at greater risk of neurological damage because their nervous systems are undergoing rapid development, their physiological defense mechanisms against toxicants are not as effective as those of adults, and they characteristically ingest foreign objects.

Studies in children demonstrate conclusively that low blood lead levels are associated with slight neurological damage, and that the severity of neurological damage increases with increasing blood lead levels. Findings of severe nervous system damage at high blood lead levels in certain studies further confirm the validity of findings of similar, but less severe, damage at lower levels.[26]

Studies of children with lower blood lead levels (10 to 15 μg/dL) show less severe but still detectable neurological changes, including a positive correlation between blood lead levels and neurological defects. A series of recent prospective studies in children support

[18] RQ levels for potential carcinogens are 1, 10, and 100 pounds; for ignitable and reactive hazardous substances, 10, 100, 1000, and 5000 pounds; and for radionuclides, 10^{-3}, 10^{-2}, 10^{-1}, 1, 10, 100, and 1000 curies.

[19] For further information on the chronic toxicity RQ adjustment methodology, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 2, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[20] For further information on the methodology for applying BHP, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 1, March 1985, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[21] No RQ level increase based on BHP occurs if the primary criteria RQ is already at its highest possible level (100 pounds for potential carcinogens and 5000 pounds for all other types of hazardous substances except radionuclides). BHP is not applied to radionuclides.

[22] The application of the TPQ criteria as part of the RQ adjustment methodology was proposed on August 30, 1989 (54 FR 35988).

[23] This level of concern is based on the Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute for Occupational Safety and Health. Because most substances do not have published IDLH values, however, levels of concern are usually estimated from acute mammalian toxicity data for the most sensitive species.

[24] For a more detailed description of how the TPQ criteria are used as part of the RQ adjustment methodology, see the Technical Background Document to Support Adjustment of the Reportable Quantities of the Extremely Hazardous Substances Designated as CERCLA Hazardous Substances, Volume 5, available for inspection in room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[25] See U.S. EPA, 1990. Air Quality Criteria for Lead, Supplement to the 1986 Addendum, Volume I.

[26] For discussion of and citations to the studies on the effects of high blood lead levels, see section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection at room M2427, U.S. EPA, 401 M Street SW., Washington, DC 20460.

the relationship between low levels of lead exposure and detectable neurological damage. Prospective studies identify a group of individuals who may be at risk from long-term exposure and then monitor exposure, as well as the health effects resulting from that exposure, over time. Prospective studies in a group of preschool children, for example, showed impaired responses in tests of mental development and the formation of concepts at blood lead levels of 10 to 25 μg/dL.[27] These impairments occurred in children who were between 24 and 57 months of age. Similarly, a different study showed that children with blood lead levels below 15 μg/dL, but above background levels, experienced impairment in mental and language development tests.[28] Prospective experiments are particularly important because adverse effects in an exposed child can be studied from early pregnancy until childhood. During this period, levels of environmental lead can be accurately and continuously assessed. Prospective studies, therefore, avoid many of the problems associated with retrospective studies, in which exposure levels must be estimated months or years after exposure began.

Based on the findings of these studies, the Agency believes that exposure of children to lead resulting in blood lead levels of as low as 10 to 15 μg/dL represents a serious health concern. This conclusion is further supported by consistent findings in a large body of experimental animal studies.[29]

2. Application of the RQ Adjustment Methodology to Neurotoxicity Data

In light of the more recent data on the neurotoxic effects of lead on children, EPA has decided to reassess the RQs for lead metal as well as the lead compounds and lead-containing hazardous wastes that are CERCLA hazardous substances using the RQ adjustment methodology (see Section II.B of this preamble). Application of the RQ adjustment methodology for a CERCLA hazardous substance begins with the derivation of a "primary criteria RQ" for each of several primary criteria, including chronic toxicity (which considers neurotoxic effects). Based on the application of the chronic toxicity criterion used to assign tentative RQs (described in Section II.B) to the neurotoxicity data on lead summarized above, EPA has calculated composite scores of between 44.8 and 51.1 for lead metal and each of the individual lead compounds listed in Table 1.[30] As indicated by Table 2 in Section II.B, the composite scores for lead and lead compounds correspond to tentative chronic toxicity RQs of 10 pounds. Therefore, lead metal and all lead compounds listed in Table 1 will receive proposed RQ adjustments of 10 pounds based on chronic toxicity.

The Agency considered the individual characteristics, including bioavailability[31] and molecular weight, of lead metal and each of the lead compounds in deriving the RQs proposed in today's rule. The specific chemical forms of lead have not been assigned differential bioavailabilities because, based on a review of the available literature on humans, the absorption rates of different chemical forms of lead appear to be about equal.[32] The Agency has adjusted the dietary lead intake levels for lead metal and each of the lead compounds by calculating the product of the intake level for lead metal and the fractional contribution of lead, based on the molecular weight of each compound.[33] These differences in dietary lead intake levels for lead metal and each of the lead compounds result in a range of composite scores (see discussion above) that correspond to a chronic toxicity RQ of 10 pounds.

EPA is soliciting public comments containing data that show a relationship between characteristics of specific lead compounds (such as water solubility, molecular weight, and particle size[34]) and the bioavailability of the lead from these compounds. Specifically, data are requested if differences in these characteristics would support the establishment of RQs other than 10 pounds for any of the lead-containing hazardous substances whose RQs are proposed to be adjusted in today's rule.

After evaluation under the primary criteria, lead metal and lead compounds were evaluated for the secondary RQ adjustment criteria of BHP. This evaluation did not result in any changes to the primary criteria RQs.

In addition to the evaluations based on the primary and secondary criteria, EPA has proposed that the TPQ criteria be incorporated into the RQ adjustment methodology (see Section II.B of this preamble). Of the lead-related substances whose RQs are proposed to be adjusted in today's rule, only tetramethyl lead meets the first of the TPQ criteria (i.e., it falls within the limits of the EHS screening criteria). Evaluation of tetramethyl lead's toxicity and its dispersion potential yields an index value corresponding to a tentative RQ of 10 pounds, which is equal to the primary criteria RQ for tetramethyl lead. Therefore, none of the primary criteria RQs for lead metal, lead compounds, and lead-containing hazardous wastes whose RQs are proposed to be adjusted in today's rule would be affected by application of the TPQ criteria. If any change is made to the way in which the TPQ criteria have been proposed to be used as part of the RQ methodology, and such a change affects the RQ for tetramethyl lead, this RQ will be reproposed for public comment in a future **Federal Register** notice.

3. RQ Adjustments Proposed Today for Lead Metal, Lead Compounds, and Lead-Containing Hazardous Wastes

As a result of the application of the RQ adjustment methodology to the neurotoxicity data on lead metal and lead compounds, EPA today is proposing to adjust the RQs for 14 individual lead-containing hazardous substances, 15 lead-containing hazardous waste streams, and the group of RCRA characteristic wastes that fail the TCLP based on their lead constituents.[35] These 30 lead-related

[27] Bellinger, D. et al., 1989, Low-level Lead Exposure and Early Development in Socioeconomically Advantaged Urban Infants. In: Smith, M.A., Grant, L.D., Sors, A.I., eds. Lead Exposure and Child Development: An International Assessment. Lancaster, United Kingdom.

[28] Ernhart, C.B. and M. Morrow-Flucak, 1989. Low-level Lead Exposure and Intelligence in the Early Preschool Years. In: Smith, M.A., Grant, L.D., Sors, A.I., eds. Lead Exposure and Child Development: An International Assessment. Lancaster, United Kingdom.

[29] For a discussion of the neurological effects of lead exposure in experimental animals, see section 3 of the Technical Background Document to Suppport Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington DC 20460.

[30] For a table providing the dose and effect ratings for each of these substances, see Exhibit 3–5 in the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[31] Bioavailability represents the rate and extent to which a substance is absorbed or otherwise assimilated into body tissue following exposure by various routes, such as ingestion.

[32] U.S. EPA, 1986. Air Quality Criteria for Lead, Volumes I–IV. Available from the National Technical Information Service (NTIS), Springfield, VA, PB87–142378.

[33] The dose derived from this intake level was used as the minimum effective dose for purposes of RQ determination. For more detailed discussion, see sections 2 and 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, and the Reportable Quantity Document for each individual lead compound, available for inspection at room M2427, U.S. EPA; 401 M Street, SW., Washington DC 20460.

[34] Releases of lead metal need to be reported only when the particles of lead metal are less than 100 micrometers in diameter (see 40 CFR 302.6(d) and 50 FR 13461, April 4, 1985).

[35] These RCRA characteristic wastes are considered as one hazardous substance for the purposes of today's proposed rule.

proposed RQ adjustments, as well as the proposed RQ adjustment for MIC, are shown in Table 1 (see Section I.B.1 of this preamble).

The RQs for all 14 individual hazardous substances are being proposed for adjustment to 10 pounds based on the primary criterion of chronic toxicity; none of their RQs was adjusted upward or downward based on BHP.[36] The RQ for a hazardous waste stream is the lowest of the RQs of the substances that are constituents of the waste stream. Each of the RQs for the 15 lead-containing hazardous waste streams is being adjusted to 10 pounds because the lowest RQ for any of the hazardous constituents of the waste streams is 10 pounds.[37] Each TC waste that is toxic by virtue of its lead constituents receives an RQ of 10 pounds, which is equal to the RQ for soluble lead salts. For further discussion of how EPA derives the RQs for TC wastes, see Section I.B.1 of this preamble.

One other lead compound (tetraethyl lead), and one lead-containing waste stream (K052), were assigned 10-pound RQs based on chronic toxicity in a previous final rule (51 FR 34534, September 29, 1986). Because the application of the RQ adjustment methodology to the neurotoxicity data on lead metal and lead compounds results in 10-pound RQs for these two substances, no adjustment to their existing 10-pound RQ levels need be proposed today, and the primary criterion on which their RQs are based (chronic toxicity) remains the same. However, the neurotoxicity data summarized in Section II.C.1 above provide additional support for the 10-pound RQs for tetraethyl lead and waste stream K052. These neurotoxicity date are available for inspection in the docket for this rulemaking (Docket Number 102 RQ–31L).[38]

The RQ for one other lead compound, lead arsenate, is not being proposed to be adjusted today. Lead arsenate was assigned a one-pound RQ is based on the potential carcinogenicity of the arsenate ion in the August 14, 1989 final rule (54 FR 33426). Because the current one-pound RQ for lead arsenate is based on the potential carcinogenicity of the arsenate ion and is lower than the 10-pound RQS proposed today for lead metal, the lead compounds discussed herein, and lead-containing waste streams, the RQ for lead arsenate does not need to be readjusted.

EPA received 10 comment letters on the 100-pound RQ adjustments for lead metal and four lead compounds published in the March 2, 1998 NPRM and two comment letters on the proposed one-pound RQs for the 11 waste streams published in the March 16, 1987 NPRM. EPA will publish its responses to the comments in these letters (along with its responses to comments received on today's proposed RQ adjustments) in the preamble to the final rule that promulgates the RQs proposed today for lead metal and lead compounds.

D. Proposed RQ Adjustment for Methyl Isocyanate

As mentioned in Section I.B.1, EPA initially proposed to adjust the statutory one-pound RQ for MIC to 100 pounds in the May 25, 1983 NPRM (48 FR 23565). After the December 3, 1984 release of MIC in Bhopal, India, which resulted in over 2,000 human fatalities and approximately 170,000 injuries, EPA withdrew this proposed RQ adjustment in the April 4, 1985 final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC.

In the March 2, 1988 NPRM (53 FR 6762), EPA announced that it had obtained additional toxicological data on MIC, including new animal studies documented in "Environmental Health Perspectives," Volume 72, and that it was awaiting human toxicological and epidemiological data associated with the release of MIC in Bhopal. EPA has completed its analysis of the animal and human data on the toxic effects of MIC. The discussion below summarizes these data, their application to the RQ adjustment methodology, and the proposed RQ for MIC.

At Bhopal, contamination of an MIC storage tank increased the pressure within the tank until a key pressure valve burst. Gases containing approximately 40,000 pounds of MIC then surged through the relief vent lines and overwhelmed the scrubber system, escaping unneutralized to the surrounding environment and city of Bhopal. Studies of pregnant women exposed to MIC as a result of this incident show an unusually high mortality rate among fetal and newborn children.[39] For example, one survey conducted nine months after the release of MIC found that miscarriage occurred in approximately 44 percent of all pregnancies, a miscarriage rate four to seven times higher than the average rate in the Bhopal region.[40] The same study found that 14 percent of the infants that had survived birth died within 30 days, a mortality rate five to six times higher than the regional rate.

Reproductive studies on laboratory mice exposed to MIC provide further evidence to support the relationship between exposure to MIC and significant increases in fetal and newborn deaths. One study of pregnant mice exposed to MIC at concentrations of 1 or 3 parts per million (ppm) during a critical period of fetal development demonstrated a positive correlation between concentration of MIC exposure and adverse fetal effects.[41] The mice in the group exposed to the higher concentration of MIC (3 ppm) demonstrated more severe effects, including a high rate of fetal mortality through 21 days of age. These effects were exhibited by mice in numerous litters (i.e., the effects were not isolated in a single litter), indicating a low probability that the effects were caused by genetic sensitivity to MIC in particular mice.

Additional animal studies have found a significant relationship between exposure to MIC and impaired lung function.[42] MIC is a lung irritant that stimulates the secretion of excessive amounts of mucus and other protective fluids in the lungs. One study of laboratory mice found that overstimulation of these fluids contributes to impaired lung function and may result in death by asphyxiation.[43] Mice that survived

[36] Releases of lead metal need to be reported only when the particles of lead metal are less than 100 micrometers in diameter (see 40 CFR 302.6(d) and 50 FR 13461, April 4, 1985).

[37] All of these waste streams contain at least one of the lead compounds proposed to be adjusted to 10 pounds today. In addition, some of these waste streams contain cadmium and hexavalent chromium, which have 10-pound final RQs.

[38] See section 3 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, and the Reportable Quantity Document for Tetraethyl Lead, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[39] For discussions of and citations to the studies on the effects of high concentrations of MIC, see section 4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 6, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[40] Varma, D.R., 1987. Epidemiological and Experimental Studies on the Effect of Methyl Isocyanate on the Course of Pregnancy. In: Hook, G.E., Lucier, G.W., eds. Environmental Health Perspectives. 72:153–157.

[41] Schwetz, B.A. et al., 1987. Methyl Isocyanate: Reproductive and Developmental Toxicology Studies in Swiss Mice. In: Hood, G.E., Lucier, G.W., eds. Environmental Health Perspectives. 72:149–152.

[42] Fowler, E.H. and D.E. Dodd, 1987. Respiratory Tract Changes in Guinea Pigs, Rats, and Mice Following a Single Six-hour Exposure to Methyl Isocyanate Vapor. In: Hook, G.E., Lucier, G.W., eds. Environmental Health Perspectives. 72:109–116.

[43] Bucher, J.R. and L. Uraith, 1989. Carcinogenicity and Pulmonary Pathology Associated With a Single, Two-hour Inhalation Exposure of Laboratory

Continued

exposure to MIC by inhalation exhibited scar formation in the lungs and decreased respiratory function.

Based on these human and animal studies of the adverse reproductive and respiratory effects of MIC, EPA has re-evaluated MIC using the RQ adjustment methodology. (see Section II.B of this preamble). Evaluation of MIC based on the chronic toxicity methodology used to assign tentative RQs (which considers reproductive and respiratory effects) resulted in a composite score of 46.[44] As shown in Table 2 in Section II.B; this composite score corresponds to a tentative chronic toxicity RQ of 10 pounds. This 10-pound RQ based on chronic toxicity was the lowest tentative RQ resulting from application of the primary RQ adjustment criteria to MIC.[45]

After the application of the primary RQ adjustment criteria, MIC was evaluated under the secondary criteria of BHP. Because MIC undergoes rapid hydrolysis in water to form methylamine (which has a 100-pound RQ) and several non-CERCLA substances, [46] the RQ for MIC was raised from the primary criteria level of 10 pounds to 100 pounds based on BHP. For further discussion of the BHP data on MIC, see Section 2 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection in the docket for this rulemaking (Docket Number 102–RQ–31L). Application of the TPQ methodology also would result in a 100-pound RQ. EPA is proposing a 100-pound RQ for MIC in today's rule. If any change is made to the way in which the TPQ criteria have been proposed to be used as part of the RQ methodology, and such a change affects the RQ for MIC, this RQ will be reproposed for public comment in a future **Federal Register** notice.

In its analysis of the toxicological data on MIC, EPA reviewed a number of studies designed to evaluate delayed, chronic effects in experimental animals following single, brief inhalation exposures similar to those that occurred at Bhopal. Extensive studies of pulmonary changes in rats were conducted in which the animals were observed for periods as long as six months following a single exposure to 3, 10, or 30 ppm of MIC.[47] These studies indicated the delayed development of restrictive lung lesions, persistent airway obstruction, and pulmonary hypertension. A close correlation appears to exist between laboratory animals and Bhopal survivors with respect to chronic pulmonary and cardiopulmonary effects.

Under the current RQ adjustment methodology, no criteria exist for addressing chronic or delayed effects resulting from single exposures to hazardous substances. Therefore, the Agency was not able to take into account the delayed pulmonary effects observed in rodents exposed by inhalation to single doses of MIC.

EPA is considering revisions to the current RQ adjustment methodology that will allow the consideration of delayed or chronic effects following single exposures to hazardous substances. At such time as these criteria are developed and implemented, the Agency will re-evaluate the RQs for those substances, such as MIC, for which data on long-term effects of acute exposures are available.

III. Reportable Quantity Adjustments Under Section 311 of the Clean Water Act

In the April 4, 1985 final rule (50 FR 13456), EPA amended 40 CFR 117.3 to make RQs adjusted under CERCLA the applicable RQs for notification of discharges of hazardous substances pursuant to CWA section 311. Ten of the hazardous substances whose CERCLA RQs are proposed to be adjusted today—lead acetate, lead chloride, lead fluoborate, lead fluoride, lead iodide, lead nitrate, lead stearate, lead sulfate, lead sulfide, and lead thiocyanate—also have RQs under the CWA. Thus, the 10-pound RQ adjustments proposed for these 10 substances apply to both CERCLA and CWA section 311. Where there is a hazardous substance in a quantity equal to or greater than an RQ into navigable waters, a single report to the National Response Center by the person in charge will satisfy the notification requirements of both statutes. Of course, the owner or operator of the facility may still need to notify State and local authorities under EPCRA section 304. (Note, however, that section 304 does not apply to vessels.) For further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the May 25, 1983 proposed rule preamble (48 FR 23569) and the April 4, 1985 final rule preamble (50 FR 13473).

IV. Reportable Quantities Listed in 40 CFR Part 355

Appendices A and B of 40 CFR Part 355, which list EHSs and their TPQs under EPCRA, also show the RQs for EHSs. Two of the substances whose RQs are proposed to be adjusted in today's rule, tetramethyl lead and MIC, are also EHSs. The RQ for tetramethyl lead is proposed to be adjusted from the statutory one-pound level to 10 pounds in today's rule. The RQ for MIC is proposed to be adjusted from the statutory one-pound level to 100 pounds. Therefore, to fully reflect the proposed RQ adjustment for tetramethyl lead and MIC, EPA is today proposing to revise not only Table 302.4 of 40 CFR part 302 (which lists the RQs for all CERCLA hazardous substances), but also appendices A and B of 40 CFR part 355.

V. Regulatory Analyses

A. Executive Order No. 12291

Executive Order 12291 requires that regulations be classified as major or non-major for purposes of review by the Office of Mangement and Budget (OMB). According to Executive Office 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local goverment agencies, or geographic regions; or

(3) 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.

As demonstrated by an economic analysis performed by the Agency, available for inspection at room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, this proposed rule is nonmajor, because, if promulgated, it would result in estimated net cost savings of $221,000 annually. In this proposed rule, RQs for 19 hazardous substances would be raised and RQs for 12 hazardous substances would be lowered from their current levels (see Table 1 in Section

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Rodents to Methyl Isocyanate. Chappell, J., ed. Journal of the National Cancer Institute. 81(20):1586–1587.

[44] For further information on the chronic toxicity data for MIC and for its dose and effect ratings, see section 4 of the Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102, Volume 6, available for inspection at room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[45] An evaluation of MIC based on acute inhalation toxicity resulted in a tentative RQ of 100 pounds. Because the 10-pound, tentative chronic toxicity RQ (based on reproductive and respiratory effects) is lower than the 100-pound tentative acute toxicity RQ, the primary criteria RQ for MIC is 10 pounds.

[46] These non-CERCLA substances include carboxymethylamine and, under certain conditions, N,N'-dimethylurea.

[47] Bucher, J.R., 1987. Methyl Isocyanate: A Review of Health Effects Research Since Bhopal. Fundamental and Applied Toxicology. 9:367–379.

I.B.1 of this preamble). The estimated net effect of these 31 proposed RQ adjustments would be to reduce by approximately 233 the number of reportable releases for these hazardous substances each year (see the economic analysis mentioned above). The estimated $221,000 annual net cost savings reflect only those effects of the RQ adjustments that are: (1) Readily quantifiable in dollars; and (2) associated with the release notification requirements under CERCLA section 103 and EPCRA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This proposed rule has been submitted to OMB for review, as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rulemakings that are likely to have a "significant impact on a substantial number of small entities." A Regulatory Flexibility Analysis is not necessary for this proposed rule, because the upper-bound total cost of compliance to small firms is negligible.

See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at room M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Therefore, I hereby certify that today's proposed rule will not have a significant impact on a substantial number of small entities. As a result, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The public reporting burden for the collection of information pursuant to CERCLA section 103 is estimated to vary from 2 to 5 hours per response, with an average of 2.1 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. These information collection requirements have been assigned OMB control number 2050–0046. The public reporting burden for the collection of information pursuant to EPCRA section 304 is estimated to be 5 hours per response (OMB control number 2050–0092).

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Managment and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

40 CFR Part 355

Air pollution control, Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Emergency Planning and Community Right-to-know Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Reportable quantity, Reporting and recordkeeping requirements, Superfund Amendments and Reauthorization Act, Threshold planning quantity.

Dated: April 30, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed to amend title 40, chapter I of the Code of Federal Regulations as follows:

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

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

Authority: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), ("the Act") and Executive Order 11735.11.

2. Section 117.3 is amended by revising the following entries in table 117.3 to read as set forth below. The note preceding Table 117.3 is republished without change.

§ 117.3 Determination of reportable quantities.

Table 117.3—Reportable Quantitites of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act

* * * * *

Note.—The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively.

Material	Category	RQ in pounds (kilograms)
* * * * *		
Lead Acetate	A	10
* * * * *		
Lead chloride	A	10
Lead fluoborate	A	10
Lead fluoride	A	10
Lead iodide	A	10
Lead nitrate	A	10
Lead stearate	A	10
Lead sulfate	A	10
Lead sulfide	A	10
Lead thiocyanate	A	10
* * * * *		

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

3. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

4. Section 302.4 is amended by revising the following entries and by adding a new entry for "Tetramethyl lead" in Table 302.4 and Appendix A to read as set forth below. The appropriate footnotes to Table 302.4 are republished without change. The note preceding Table 302.4 is republished without change.

§ 302.4 Designation of hazardous substances.

* * * * *

Note.—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations

are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Source" column indicates the statutory source for hazardous substances defined in section 101(14) of CERCLA or designated udner section 102 of CERCLA: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters, "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[NOTE: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
* * *	* * *	* * *	*	*		*	
Acetic acid, lead (2+) salt	301-04-2	Lead acetate	5000	1,4	U144	A	10(4.54)
* * *	* * *	* * *	*	*		*	
Lead ††	7439-92-1		1*	2		A	10(4.54)
Lead acetate	301-04-2	Acetic acid, lead salt	5000	1,4	U144	A	10(4.54)
* * *	* * *	* * *	*	*		*	
Lead, bis(acetato-O)tetrahydroxytri	1335-32-6	Lead subacetate	1*	4	U146	A	10(4.54)
Lead chloride	7758-95-4		5000	1		A	10(4.54)
Lead fluoborate	13814-96-6		5000	1		A	10(4.54)
Lead fluoride	7783-46-2		1000	1		A	10(4.54)
Lead iodide	10101-63-0		5000	1		A	10(4.54)
Lead nitrate	10099-74-8		5000	1		A	10(4.54)
Lead phosphate	7446-27-7	Phosphoric acid, lead salt	1*	4	U145	A	10(4.54)
Lead stearate	7428-48-0 1072-35-1 52652-59-2 56189-09-4		5000	1		A	10(4.54)
Lead subacetate	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri	1*	4	U146	A	10(4.54)
Lead sulfate	15739-80-7 7446-14-2		5000	1		A	10(4.54)
Lead sulfide	1314-87-0		5000	1		A	10(4.54)
Lead thiocyanate	592-87-0		5000	1		A	10(4.54)
* * *	* * *	* * *	*	*		*	
Phosphoric acid, lead (2†) salt (2:3)	7446-27-7	Lead phosphate	1*	4	U145	A	10(4.54)
* * *	* * *	* * *	*	*		*	
Tetramethyl lead	75-74-1		1*	5		A	10(4.54)
* * *	* * *	* * *	*	*		*	
Unlisted Hazardous Wastes:							
* * *	* * *	* * *	*	*		*	
Characteristic of Toxicity:							
* * *	* * *	* * *	*	*		*	
Lead (D008)			1*	4	D008	A	10(4.54)
* * *	* * *	* * *	*	*		*	
K002—Wastewater treatment sludge from the production of chrome yellow and orange pigments.			1*	4	K002	A	10(4.54)
K003—Wastewater treatment sludge from the production of molybdate orange pigments.			1*	4	K003	A	10(4.54)
* * *	* * *	* * *	*	*		*	
K005—Wastewater treatment sludge from the production of chrome green pigments.			1*	4	K005	A	10(4.54)
* * *	* * *	* * *	*	*		*	
K046—Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.			1*	4	K046	A	10(4.54)
* * *	* * *	* * *	*	*		*	
K048—Dissolved air flotation (DAF) float from the petroleum refining industry.			1*	4	K048	A	10(4.54)
K049—Slop oil emulsion solids from the petroleum refining industry.			1*	4	K049	A	10(4.54)
* * *	* * *	* * *	*	*		*	
K051—API separator sludge from the petroleum refining industry.			1*	4	K051	A	10(4.54)
* * *	* * *	* * *	*	*		*	
K061—Emission control dust/sludge from the primary production of steel in electric furnaces.			1*	4	K061	A	10(4.54)
* * *	* * *	* * *	*	*		*	

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[NOTE: All comments/notes are located at the end of this table]

Hazardous substance	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code †	Statutory RCRA waste No.	Final RQ Category	Final RQ Pounds (Kg)
K062—Spent pickle liquor from steel finishing operations.			1*	4	K062	A	10(4.54)
K069—Emission control dust/sludge from secondary lead smelting.			1*	4	K069	A	10(4.54)
K086—Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.			1*	4	K086	A	10(4.54)
K100—Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.			1*	4	K100	A	10(4.54)

†—indicates the statutory source as defined by 1, 2, 3, 4, or 5 below:
1—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
5—indicates SARA Title III Section 302 substances designated under CERCLA Section 102(a)
1*—indicates that the 1-pound RQ is a CERCLA statutory RQ
††—No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches)

Appendix A—Sequential CAS Registry Number List of CERCLA Hazardous Substances

CASRN	Hazardous substance
75741	Tetramethyl lead.
301042	Acetic acid, lead salt. Lead acetate.
592870	Lead thiocyanate.
1072351	Lead stearate.
1314870	Lead sulfide.
1335326	Lead, bis(acetato-O) tetrahydroxytri. Lead subacetate.
7428480	Lead stearate.
7439921	Lead.
7446142	Lead sulfate.
7446277	Lead phosphate. Phosphoric acid, lead (2+) salt (2:3).
7758954	Lead chloride.
7783462	Lead fluoride.
10099748	Lead nitrate.
10101630	Lead iodide.
13814965	Lead fluoborate.
15739807	Lead sulfate.
52652592	Lead stearate.
56189094	Lead stearate.

PART 355—EMERGENCY PLANNING AND NOTIFICATION

5. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

6. Part 355 is amended by revising the following entries in appendices A and B.

APPENDIX A TO PART 355 —THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
75–74–1.	Tetramethyllead.	i	10	100

Notes:
*Only the statutory or final RQ is shown. For more information, see 40 CFR Table 302.4.

(i) Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

APPENDIX B TO PART 355 —THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS Number Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
75–74–1.	Tetramethyllead.	i	10	100

Notes:
*Only the statutory or Final RQ is shown. For more information, see 40 CFR Table 302.4.

(i) Chemicals on the original list that do not meet toxicity criteria but because of their high production volume and recognized toxicity are considered chemicals of concern ("Other chemicals").

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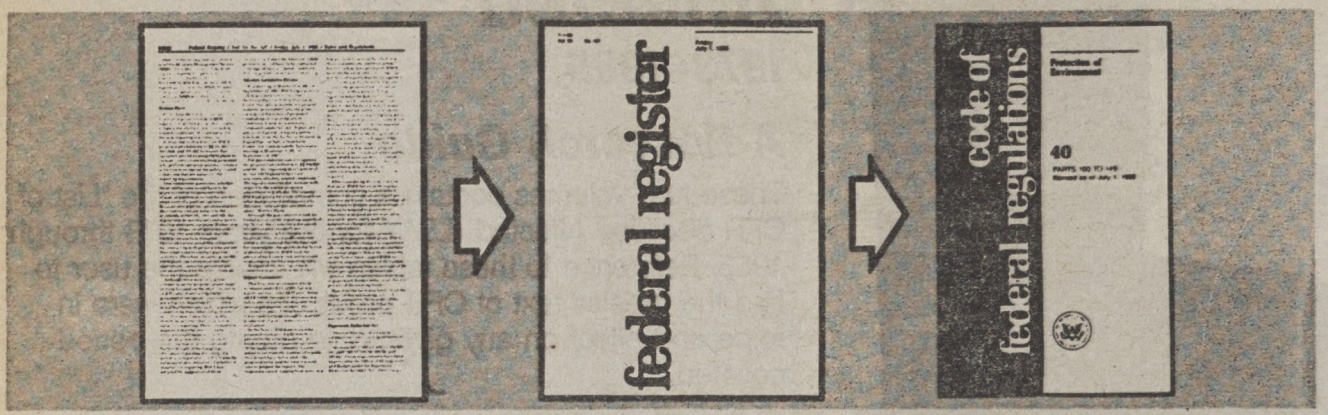
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