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President

Proclamation 6540 of April 2, 1993


By the President of the United States of America

A Proclamation

As America approaches a new century, we face hard truths and must take strong steps. As a Nation, we must provide hope for all Americans and opportunity for them to compete and to succeed. A sound, well-rounded education that prepares students for achievement and success is a moral imperative and an economic necessity.

The United States must work to improve the quality of education for all students, to ensure access and opportunity, and to build public-private partnerships, all of which will help students meet high standards of achievement. Accomplishing that mission will require the involvement of everyone—not just teachers and administrators, but every person, every family, and every community. We must take responsibility for ensuring the success of generations to follow. I commend the leadership and commitment of those inside and outside of schools who are working each day to promote and encourage excellence in education for all Americans.

Our Founders saw themselves in the light of posterity. We must do the same. John Kennedy reminded us that civilization is a race between education and catastrophe—and it is up to us to determine the winner.

To recognize the work of Rabbi Menachem Mendel Schneerson, the leader of the Lubavitch movement, on the occasion of his 91st birthday on April 2, 1993, the Congress, by House Joint Resolution 150, has designated April 2, 1993, as “Education and Sharing Day, U.S.A.” and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 2, 1993, as Education and Sharing Day, U.S.A. I call upon the people of the United States, government officials, educators, and volunteers to observe the day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William Clinton
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.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8470]

RIN 1545-AR21

Intercompany Transfer Pricing Regulations Under Section 482; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains corrections to Treasury Decision 8470, which was published in the Federal Register for Thursday, January 21, 1993 (58 FR 5263). The temporary regulations relate to intercompany transfer pricing.

EFFECTIVE DATE: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), (202) 622-3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary and proposed regulations under section 482 were published in the Federal Register on January 21, 1993 (58 FR 5263 and 5310). The temporary regulations are generally effective for taxable years beginning after April 21, 1992. The 1992 proposed cost sharing regulations will be the basis of the final regulations that will be promulgated as §1.482-7, and therefore, are the provisions on which comments are solicited. The intent was to have the cost sharing provisions of the 1968 regulations apply during the period before finalization of the 1992 proposed regulations. This correction notice is to clarify such intent and to provide that the text of §1.482-2A(d)(4), the 1968 regulations cost sharing provisions, will continue to apply as §1.482-7T during the period before further action is taken on the 1992 proposed cost sharing regulations.

Need for Correction

As published, T.D. 8470 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of temporary regulations (T.D. 8470), which was the subject of FR Doc. 93-1109, is corrected as follows:

1. On page 5271, column 2, instructional Par. la. is corrected to read as follows:

"Par. 1a. Section 1.482-1 is redesignated as §1.482-1A and an undesignated centerheading preceding §1.482-1A is added to read as follows:".

2. On page 5271, column 2, immediately preceding instructional Par. 2., instructional Par. 1b. and its regulatory text is added to read as follows:

"Par. 1b. Section 1.482-2A is added and §1.482-2 (d) and (e) are redesignated as §1.482-2A (d) and (e) to read as follows:

§1.482-2A Determination of taxable income in specific situations.

(a)-(c) For applicable rules, see §1.482-2T (a) through (c).

* * * * *

3. On page 5271, column 2, instructional Par. 2. is corrected to read as follows:

"Par. 2. Sections 1.482-OT, 1.482-1T and 1.482-3T through 1.482-7T are added. Section 1.482-2 is redesignated as §1.482-2T, and §1.482-2T (d) is added to read as follows:".

4. On page 5271, column 2, in the table of contents under §1.482-OT, the entries for §1.482-2T (a) through (c) and §1.482-7T are correctly added to read as follows:

§1.482-OT Outline of regulations under section 482.

* * * * *

§1.482-3T Determination of taxable income in specific situations.

(a) Loans or advances.

(b) Interest on bona fide indebtedness.

(i) In general.

(ii) Application of paragraph (a) of this section.

(C) Interest on bona fide indebtedness.

(B) Alleged indebtedness.

(C) Period for which interest shall be charged.

(A) General rule.

(B) Exception for certain intercompany transactions in ordinary course of business.

(C) Exception for trade or business of debtor member located outside the United States.

(D) Exception for regular trade practice of creditor member or others in creditor's industry.

(E) Exception for property purchased for resale in a foreign country.

(iv) Payment; book entries.

(2) Arm's length interest rate.

(i) In general.

(ii) Funds obtained at situs of borrower.

(iii) Safe haven interest rates for certain loans and advances made after May 8, 1986.

(A) Applicability.

(B) Safe haven interest rate based on applicable Federal rate.

(C) Applicable Federal rate.

(D) Lender in business of making loans.

(E) Foreign currency loans.

(3) Coordination with interest adjustments required under certain other Code sections.

(4) Examples.

(b) Performance of services for another.

(1) General rule.

(2) Benefit test.

(3) Arm's length charge.

(4) Costs or deductions to be taken into account.

(5) Costs and deductions not to be taken into account.

Tuesday, April 6, 1993
§ 1.482-7T Cost Sharing.

§ 1.482-1T [Corrected]
5. On page 5275, column 2, § 1.482-1T(c)(3)(ii), third line from the bottom of the paragraph, the language “allocated or imputed under § 1.482-2(a)” is corrected to read “allocated or imputed under § 1.482-2T(a)”.

6. On page 5278, column 1, § 1.482-1T(d)(3)(ii)(B), Example (2), line 13, the language “fees paid by S2 to P for the use of P’s” is corrected to read “fees paid by S2 to P for the use of P’s”.

7. On page 5282, column 3, § 1.482-2T (a) through (c), lines 1-3, are corrected by removing the text and adding five asterisks in their place to read as follows:

§ 1.482-2T Determination of taxable income in specific situations.

§ 1.482-3T [Corrected]
8. On page 5285, column 2, § 1.482-3T(c)(4), paragraph (ii) of Example 10., last line in the column, the language “XY then a further adjustment to their gross” is corrected to read “XY a further adjustment to their gross”.

§ 1.482-4T [Corrected]
9. On page 5289, column 1, § 1.482-4T(e)(3)(iii), last line in the paragraph, the language “as provided in § 1.482-2(a)(4) (cost)” is corrected to read “as provided in § 1.482-2T(a)”.

10. On page 5289, column 2, § 1.482-4T(e)(3)(iii), line 3, the language “as provided in § 1.482-2(a)(4) (cost)” is corrected to read “as provided in § 1.482-2T(a)”.

11. On page 5293, column 1, § 1.482-7T is correctly added in the appropriate place to read as follows:

§ 1.482-7T Cost sharing.

Where a member of a group of controlled entities an interest in intangible property as a participating in a bona fide cost-sharing arrangement with respect to development of such intangible property, the district shall not make allocations with respect to such except as may be appropriate to reflect each arm’s length share of the costs and risks of developing property. A bona fide cost-sharing arrangement is agreement, in writing, between two or more members of controlled entities providing for the sharing of costs risks of developing intangible property that may be produced. In order for the arrangement to qualify as a bona fide agreement, it must reflect an effort in good faith by participating members to bear their respective shares of the costs and risks of development on an arm’s length basis. In order for the sharing of costs and risks to be on an arm’s length basis, the terms and conditions must be comparable to those which would have been adopted by parties similarly situated had they entered into such arrangement. If an oral cost-sharing arrangement, into prior to April 16, 1968, and continued in effect that date, is otherwise in compliance with the prescribed in this section, it shall constitute a bona fide cost-sharing arrangement if it is reduced prior to January 1, 1969.

Cynthia E. Grigsby, Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-7763 Filed 4-5-93; 8:45 am]
Beaver, and Birch Creek, or alternatively, that moose hunting on all public lands within GMU 25(D) West be authorized only for residents of those villages; (2) that the moose hunting season be changed to allow hunting throughout the year, or alternatively, from August 25 to February 28; and (3) that the bag limit of 1 bull moose per person, up to a total harvest of 35 bulls, be changed to community bag limits for Stevens Village, Beaver, and Birch Creek.

On September 15, 1992, the Board, in addressing those requests, met to reconsider the previously adopted Federal subsistence regulations which affected the harvest of moose on public lands in GMU 25(D) West. First, the Board affirmed its previous decision to terminate all moose harvest on public lands in GMU 25(D) West when 35 bulls have been harvested in the entirety of GMU 25(D) West. The Board found that such a provision was necessary to assure the continued viability of that moose population.

Second, the Board considered the alleged necessity for, and the implications of, a year-round subsistence harvest season. The Board found that a year-round season did not necessarily represent the customary and traditional use of moose in that area and would likely increase moose harvest levels, including the harvest of female moose in that population. The Board considered the potential for an increase in the inadvertent harvest of cows that might be mistakenly identified as antlerless bulls during late winter hunting and for the potential increase in intentional illegal take of cows. The Board determined that a split season of Aug. 25 to Sept. 25 and Nov. 1 to Feb. 28 would accommodate the customary and traditional use of moose by the affected rural Alaska residents, assist the Board in assuring the continued viability of the moose population in GMU 25(D) West, and eliminate the harvest of moose during the warmest season when meat is much more susceptible to spoilage. Therefore, the Board established a split moose harvest season of Aug. 25 to Sept. 25 and Nov. 1 to Feb. 28 as the Federal subsistence season for moose in GMU 25(D) West. The period of Sept. 26 to Oct. 31 was not included as that represents the rutting season when bull moose meat is unpalatable and not taken for subsistence uses.

Third, the Board analyzed the need for confining moose harvest on public lands in GMU 25(D) West to residents of Beaver, Birch Creek, and Stevens Village. Although unable to identify a precise moose harvest total that would reflect the customary and traditional use of moose by residents of the three villages, the Board, nevertheless, recognized that the anticipated subsistence moose harvest by those residents, under the aforementioned season, would most likely approximate or potentially exceed the total allowable harvest of 35 bulls. Therefore, in order to assure the continued viability of the moose population and provide for the continuation of subsistence uses, the Board closed public lands in GMU 25(D) West to moose harvest by individuals other than residents of Beaver, Birch Creek, or Stevens Village.

Fourth, the Board weighed the benefits and detriments of implementing community bag limits for the three communities. The Board recognizes the value of community bag limits in accommodating customary and traditional practices, and has incorporated provisions for community bag limits and alternate permitting systems in the regulations. However, the implementation of community bag limits requires careful planning to ensure that appropriate limits are established and that effective harvest monitoring systems are developed. Presently, the Board finds it impracticable to establish community bag limits for Stevens Village, Beaver, and Birch Creek this year. Nevertheless, to ensure the continuation of subsistence uses and to ensure the conservation of healthy populations, the Board considered and adopted an apparent equivalent of community bag limits.

Because some hunters have customarily and traditionally harvested more than their personal need in order to share with other family or community members who find it impossible to provide for their own need, the Board has authorized the use of an alternate subsistence permit that would allow one person, who qualifies to engage in subsistence uses of moose, to designate another person who is equally qualified. The designee, with the alternate permit, may harvest a moose on public lands in GMU 25(D) West for the qualified person who is unable to harvest a moose himself or herself. The Board finds these amendments, which became effective September 22, 1992, and expire on June 30, 1993, to be exempt from the Administrative Procedures Act (APA) requirement that there be public notice and opportunity for the public to comment on these amendments prior to their publication. Specifically, the Board has determined that such requirements in this instance are impracticable, unnecessary, and contrary to the public interest.

In an effort to accommodate, expeditiously, the customary and traditional uses of moose on public lands in GMU 25(D) West, the Board amended only that portion of the regulations related to moose harvest on the affected public lands. Without these modifications, there are exists a likelihood that residents of Beaver, Birch Creek, and Stevens Village would be denied their customary and traditional uses of moose.

Notice and comment procedures at this time would impede and delay the subsistence permit for the villagers to residents, provide insignificant benefits in nature and impact, and fail to serve the public interest. Therefore, the Board has not applied the notice and comment procedures prior to publication of these amendments.

In addition, the Board finds good cause to implement these amendments as of September 22, 1992, the date on which the Board made its decision known to the representative for the three villages and the State of Alaska. Delay in the effective date would permit Alaskans who do not reside in one of the three villages to continue harvesting moose on public lands in GMU 25(D) West, thereby restricting the customary and traditional uses of moose by residents of the three villages. Because such a restriction would adversely affect the subsistence permits for the墅 residents of the three villages, the Board finds these amendments to be exempt, under the APA, from the requirement that they be published thirty days prior to their effective date.

In light of the Board’s decision, the following amendments are made in identical fashion to 36 CFR part 242 and 50 CFR part 100.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100—[AMENDED]

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:
part 242 and 50 CFR part 100, subpart D is amended as follows:

In the table in § 203.25(m) (25) the listing for "Moose: Unit 25(D) (West)" in columns 1 and 2 (Bag Limits and Open Seasons) the second paragraph is revised to read:

Bag limits

Open seasons

Moose:

Aug. 25 to Sept. 25 and
Nov. 1 to Feb. 28.

Unit 25(D)(West)—that portion of Unit 25(D) not within the Dalton Highway Corridor Management Area, lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek, and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek To Nelson Mountain on the Unit 25(D) boundary—1 bull by Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. All moose harvest on public lands in this unit will be closed when a total of 35 bulls have been harvested in the entirety of Unit 25(D) West. Federal public lands in Unit 25(D)(West) are closed to taking of moose by anyone other than residents of Beaver, Birch Creek, and Stevens Village.

Ron McCoy,
Interim Chair, Federal Subsistence Board.
Michael A. Barton,
Regional Forester, USDA-Forest Service.

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EPA is approving VOC From Synthetic Organic Chemical Manufacturing Industries (SOCMI) in Philadelphia.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule is issued to correct errors caused by the redesignation in § 202.3 of paragraphs (b)(6) and (b)(7) to (b)(7) and (b)(8) respectively and the addition of a new paragraph (b)(8) for Group Registration of Copyrights to Copyright registration.

Final Regulation

In consideration of the foregoing, part 202 of 37 CFR, chapter II is amended in the manner set forth below.

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read as follows:


§ 202.3 [Amended]

Section 202.3 is amended as follows:

2. In paragraph (b)(3)(ii) introductory text remove "(b)(6)" and add in its place "(b)(7)."

3. In paragraph (b)(7)(ii) introductory text remove "§ 203.3(b)(6)" and add in its place "§ 203.3(b)(7)."

4. In paragraph (b)(7)(ii)(C) remove "(b)(6)(i)(E)" and add in its place "(b)(7)(i)(E)."

5. In footnote 8 to paragraph (c)(2) remove "(b)(6)" and add in its place "(b)(7)."

6. In footnote 8 to paragraph (c)(2) remove "(b)(6)(ii)" and add in its place "(b)(7)(ii)."

7. In footnote 8 to paragraph (c)(2) remove "(b)(6)(ii)(A)" and add in its place "(b)(7)(ii)(A)."


Ralph Oman,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Group III CTG; RACT For VOC From Synthetic Organic Chemical Manufacturing Industries (SOCMI) in Philadelphia.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania, Department of Environmental Resources (PADER). This revision establishes and requires...
reasonably available control technology (RACT) to control fugitive volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industries (SOCMI). This revision has been submitted by PADER at the request of Philadelphia Air Management Service (AMS) to fulfill its 1982 ozone SIP commitment to adopt all applicable control technique guidelines (CTGs) published by EPA. The intended effect of this action is to approve the Philadelphia SOCMi regulations. This action is being taken in accordance with section 110 and part D of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This rule will become effective on May 6, 1993.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, Harrisburg, PA 17105–8468; Department of Public Health, Air Management Services, 321 University Avenue, Spelman Building, Philadelphia PA 19104.

**FOR FURTHER INFORMATION CONTACT:** Aquanetta Dickens, (215) 597–4554.

**SUPPLEMENTARY INFORMATION:** On May 11, 1992 (57 FR 20068), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of revisions to Philadelphia Air Management Regulation V to control VOC from SOCMi. The formal SIP revision was submitted by the Commonwealth of Pennsylvania at the request of the Philadelphia Air Management Services on September 9, 1991. The specific requirements of Philadelphia’s RACT regulations for the control of fugitive emissions from SOCMi and the rationale for EPA’s proposed action were explained in the NPR and will not be restated here. Only one comment was received on the NPR. 

**Response to Public Comments:** On June 11, 1992, the U.S. Small Business Administration, Office of Chief Counsel for Advocacy submitted a letter of comment on the NPR published on May 11, 1992 (57 FR 20068), entitled “Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania Group III CTG: RACT for VOC from SOCMi.”

The Small Business Administration (SBA) commented that EPA did not comply with Section 605(b) of the Regulatory Flexibility Act (RFA) which requires a certification and statement of the proposed rule. Section 605(b) also requires the certification and statement be transmitted to the Chief Counsel for Advocacy. The SBA requested that EPA make the appropriate corrections in order to comply with the RFA. 

**Response:** EPA previously waived the requirement in the RFA that EPA transmit a copy of the regulatory flexibility certification to the Chief Counsel for Advocacy on SIP approvals. EPA has conferred with the SBA and additional language has been added to this notice providing the rationale for this waiver at the paragraph regarding section 605(b) of the RFA.

**Final Action:** EPA is approving amendments to Philadelphia Air Management Regulation V for the control of fugitive emissions from SOCMi submitted on September 9, 1991 as a revision to the Pennsylvania SIP. 

The Agency has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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

This action approving Pennsylvania’s revision to Regulation V to control VOC leaks from SOCMi facilities has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA’s request.

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the Commonwealth is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.


Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving revisions to Philadelphia’s Air Management Regulation V to control VOCs from SOCMi must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

**Dated:** September 29, 1992.

Edwin B. Erickson, Regional Administrator, Region III.

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

**PART 52—[AMENDED]**

1. The authority citation for 40 CFR part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.
52.2020 Identification of plan.

§ 52.2020 Revisions to the State Implementation Plan submitted by the Pennsylvania Department of Environmental Resources on September 9, 1991. The effective date of the regulation submitted is May 23, 1988. A letter from the Pennsylvania Department of Environmental Resources dated September 9, 1991 submitting a revision to the Pennsylvania State Implementation Plan is March 9, 1991. The effective date of the compliance guidelines was March 9, 1991. Adding paragraph (c)(78) to read as follows:


(c) Revisions to the State Implementation Plan. (B) Section XIII, Process Equipment Leaks of Philadelphia Air Management Regulation V—Control of Emissions of Organic Substances from Stationary Sources. The effective date of the regulation submitted is May 23, 1988.

(ii) Additional materials. (A) The remainder of the May 23, 1988 State submittal.

The regulations had been jointly proposed by industry, the IEPA and environmental groups and were judged to be economically reasonable. The IPCB Final Opinion and Order for this docket contained all subsections of subpart L. However, when the IPCB submitted it to the Secretary of State, subsections (a) and (b) of Section 201.405—Excess Emission Reporting, were inadvertently omitted. Thus, on November 15, 1989, the IPCB adopted a Final Opinion and Order for correcting the official copy of Section 201.405 to incorporate these subsections. This rulemaking was submitted to the USEPA on August 28, 1990.

II. Discussion

The Illinois regulations contain provisions that meet the requirements of 40 CFR 51.214 and part 51, appendix P. Generally, sections of the Illinois regulations correspond to provisions of 40 CFR 51.214 or appendix P. This correspondence is described below.

Subpart J: Illinois’ amendments to 35 IAC, part 201, subpart J, Section 201.281, Permit Monitoring Equipment Requirements amended Subpart J, to provide for applicability of Subpart L Continuous Monitoring Requirements, to emission sources and air pollution control equipment. This amendment of subpart J complies with the rules of 40 CFR 52.2020. This rulemaking to adopt provisions satisfying the monitoring requirements under section 110 of the Clean Air Act. Subsequent to the filing of CBE’s suit, the IEPA began developing monitoring rules for Illinois and in March, 1984, the IEPA proposed monitoring regulations in 35 IAC, part 285. In April, 1984, the IEPA withdrew the monitoring regulations, and based on new information, modified and reproposed them. Final monitoring regulations were adopted by IEPA in January, 1985 and submitted to USEPA as a revision to the SIP in March, 1985. However, USEPA notified the IEPA in June, 1985, that it would disapprove the monitoring regulations and afforded the IEPA thirty days to either withdraw the rules or notify USEPA that the deficiencies would be corrected. As a result of negotiations, the parties to the litigation reached a tentative agreement which, among other things, required the adoption of the final agreed-upon monitoring regulations by the IPCB within one year of the filing of proposed rules. The proposed rules were filed with the IPCB on November 10, 1987, adopted and submitted to the USEPA on March 17, 1989.

At the time of submission, these regulations were reported to affect approximately nineteen (19) industrial facilities. The Illinois rulemaking was a joint proposal by industry, the IEPA and environmental groups and was judged to be economically reasonable.

The Illinois regulations contain provisions that meet the requirements of 40 CFR 51.214 and part 51, appendix P. Generally, sections of the Illinois regulations correspond to provisions of 40 CFR 51.214 or appendix P. This correspondence is described below. Generally, subpart J: Illinois’ amendments to 35 IAC, part 201, subpart J, Section 201.281, Permit Monitoring Equipment Requirements amended Subpart J, to provide for applicability of Subpart L Continuous Monitoring Requirements, to emission sources and air pollution control equipment. This amendment of subpart J complies with the
requirements of 40 CFR part 51, appendix P (1.1).

Subpart L: This subpart contains continuous monitoring provisions and includes sections that address continuous monitoring requirements (201.401), alternative monitoring (201.402), exempt sources (201.403), monitoring system malfunction (201.404), excess emission reporting (201.405), data reduction (201.406), retention of information (201.407), and compliance schedules (201.408).

40 CFR part 51, appendix P applies to a minimum of four source categories: (1) fossil fuel fired steam generators with an annual average capacity factor greater than 30%, (2) sulfuric acid plants of greater than 300 tons per day production capacity, (3) nitric acid plants of greater than 300 tons per day production capacity, and (4) certain fluid bed catalytic cracking unit catalyst regenerators. Section 201.401(a) of Subpart L specifies the sources subject to continuous monitoring requirements and complies with the requirements of appendix P (2.1—2.4).

The Illinois regulations do not contain provisions for granting extensions of the time provided for installation of monitors, which is specifically allowed, if a State so chooses, under 40 CFR 51.214 and appendix P Section 1.3. Section 201.401(b) requires that continuous monitoring equipment meet the performance specifications set forth in paragraphs 3.1 through 3.8 of 40 CFR part 51, appendix P. However, the Illinois regulations specifically limit this requirement to the provisions of the 1987 edition of 40 CFR, thus excluding amendments and revisions to appendix P that have been made since 1987. Although, to date, no changes have been made to appendix P since 1987, appendix P references and incorporates specifications in 40 CFR part 60, appendixes A and B, to which several revisions have been made since 1987. Section 201.401(b) also requires continuous monitoring equipment to meet performance specifications set forth in the relevant portions of 35 IAC 230 Appendices A and B. 35 IAC 230 appendixes A and B reference 40 CFR part 60, Appendices A and B and require the performance specifications detailed in these Appendices. Therefore, Illinois has provided a mechanism whereby Illinois can incorporate updates to the technical requirements in 40 CFR part 60, appendixes A and B by amending 35 IAC 230 appendixes A and B to include later editions of 40 CFR part 60, appendixes A and B. Illinois has expressed the intention to update these technical requirements for performance specifications by amending 35 IAC 230 appendixes A and B. Additionally, the federally enforceable operating permit can be used to require any relevant updated portions of 40 CFR part 60, appendixes A and B that may apply to that particular facility.

Section 201.402: Alternative Monitoring, allows alternative monitoring to be prescribed on a case-by-case basis, by permit and complies with 40 CFR part 51, appendix P (6.0). Section 201.403 exempts sources subject to monitoring requirements that are part of a new source performance standard adopted by USEPA pursuant to section 111 of the Clean Air Act and complies with 40 CFR part 51, appendix P (1.2).

Section 201.404: Monitoring System Malfunction, exempts unavoidable malfunctions and repairs and complies with 40 CFR part 51, appendix P (1.4).

Section 201.405: Excess Emission Reporting, lists reporting requirements for excess emissions and complies with 40 CFR part 51, appendix P (4.0).

Section 201.406: Date Reduction, regulates the method to convert monitoring data to the units of the emission limitation, and complies with 40 CFR part 51, appendix P (5.0).

Section 201.407: Retention of Information, requires that information be retained for at least two years from the date of collection and complies with 40 CFR 51.214(d)(1). Section 201.408: Compliance Schedules, requires owners and operators of sources to install and monitor in accordance with the compliance schedule in the permit, and complies with 40 CFR 51.214(f)(1). Illinois’ regulations do not contain any description of generally applicable alternative monitoring procedures to be submitted for the Administrator’s approval under appendix P (3.9).

Therefore, USEPA is not today approving any generally applicable alternative monitoring procedures, but rather is approving Illinois’ provision for case-by-case approval of alternative monitoring requirements under certain conditions, as specified in appendix P (6.0).

Special Consideration/Alternative Monitoring Requirements: appendix P (6.0) provides for case-by-case determination of alternative monitoring procedures if certain conditions are met. The Illinois regulations contain corresponding provisions that comply with the requirements of appendix P (6.0).

Appendix P Section 6.0 Special Consideration, allows a State to approve on a case-by-case basis, alternative monitoring requirements different from the provisions of parts 1—5 of appendix P. Such case-by-case approved alternative monitoring requirements may be prescribed when installation of a continuous monitoring system or monitoring device specified in appendix P would not provide accurate determination of emissions; when an affected facility is infrequently operated (some affected facilities may operate less than one month per year); when a State determines that monitoring systems prescribed in appendix P cannot be installed due to physical limitations at the facility; or when the requirements would impose an extreme economic burden on a source owner or operator. In these cases, a State may set forth alternative emission monitoring and reporting requirements for the source that will satisfy the intent of appendix P (e.g. periodic stack tests). In Section 201.402, Illinois has fulfilled this appendix P requirement by specifying its criteria for determining the physical plant limitations or extreme economic situations that it will use to determine whether alternative monitoring requirements may be substituted for otherwise applicable monitoring requirements.

Section 201.402: Alternative Monitoring, provides that alternative monitoring requirements for a particular source subject to Section 201.401(a): Continuous Monitoring Requirements, shall be prescribed by permit upon a demonstration by the owner or operator that the continuous monitoring requirement under Section 201.401 (a) is technically unreasonable or infeasible due to physical plant limitations or would impose an extreme economic burden. Under Section 201.402, the criteria for determining whether alternative monitoring may be appropriate are the likelihood of inaccurate measurements, physical constraints for equipment placement, and economic burdens on the facility. Specifically, Section 201.402 provides that before alternative monitoring may be prescribed in the permit, it must be demonstrated that compliance with the requirements of section 201.401: (1) Would not provide accurate determination of nitrogen dioxide, sulfur dioxide, carbon dioxide, percent oxygen, or opacity; or (2) the monitoring equipment cannot be installed due to physical limitations at the facility; or (3) would impose an extreme economic burden in proportion to the significance of the monitoring information which would be provided, in that the cost of monitoring would exceed the norm for similar sources and those costs would have a significant adverse effect on the profitability of the operations. In such
instance, Illinois must set forth alternative emission monitoring and reporting requirements to satisfy the intent of the Federal regulations as specified in 40 CFR 51.214 and part 51, appendix P, and these requirements will be incorporated into the source operating permit.

III. Illinois' Operating Permit Program

In the past, USEPA's general response to State rules containing discretionary provisions has been disapproval of the rules on the basis that discretionary provisions have the potential to allow modification of the SIP without USEPA review and approval. Such discretion may render the plan inadequate to attain and maintain the associated national ambient air quality standards (NAAQS).

However, on December 17, 1992 (57 FR 59928), USEPA approved Illinois' operating permit program for the purpose of issuing federally enforceable construction and operating permits as part of the approval of the new source review program under Title I of the Clean Air Act. Therefore, the terms and conditions of both Illinois construction permits and operating permits are now federally enforceable. In a letter dated November 18, 1991, which is part of the administrative record of this approval, Illinois committed to send each permit to USEPA for review prior to Illinois' issuance of the permit. Illinois understands that any permit USEPA determines does not meet the requirements of 40 CFR 51, appendix P and notifies IEPA during the 30 day public comment period as provided for in Illinois' public participation requirements (Section 201.150) will not be federally enforceable. The participation requirements in Section 201.150 also mandate notice to the public of a proposed permit issuance and provide for a comment period. USEPA may deem a permit not federally enforceable if monitoring provisions do not comply with the requirements of 40 CFR 51.214 and part 51, appendix P. USEPA's determination will: (1) Be done according to appropriate procedures, and (2) be based upon the permit, permit approval procedures or permit requirements which do not conform with the operating permit program requirements and the requirements of USEPA's underlying regulations. Among other things, underlying requirements include the requirements of 40 CFR 51.214, part 51, appendix P, and Illinois' approved SIP. Should USEPA decide that operating permit containing alternative monitoring requirements not federally enforceable, the underlying continuous monitoring requirements to which the source would be subject would be the Federal requirements contained in Section 201.401 of the State rule. Moreover, Illinois' regulations require compliance with applicable Federal law (Section 203.205). It is important to note that nothing in today's regulation supersedes or prevents regulation under 40 CFR part 75 of a source subject to Acid Rain monitoring requirements under that part.

USEPA believes that sufficient safeguards exist to allow USEPA to approve this limited discretionary provision, because: (1) Illinois' operating and construction permits are federally enforceable under the approved Title I permit program; (2) under the approved permit program, Illinois has committed to send these permits to USEPA for review prior to Illinois' approval of the permit, and (3) a mechanism exists whereby USEPA may deem a permit not "federally enforceable", resulting in the source being subject to the underlying continuous monitoring requirements.

IV. USEPA's Rulemaking Action

Rulemaking Action: For the reasons stated above, USEPA approves the incorporation of Subpart J, Section 201.281 and Subpart L Sections 201.401-201.406 of 35 IAC into the Illinois SIP.

USEPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective June 17, 1993 unless, by May 6, 1993, notice is received that adverse or critical comments will be submitted.

If notice of adverse or critical comment is received, this action will be withdrawn before the effective date by publishing two notices. One notice will withdraw the final action and the second will begin a new rulemaking period by announcing proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 7, 1993.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it acts on USEPA's request.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements even though the submittal preceded the date of enactment.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993.

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

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

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Air pollution control, Continuous emissions monitoring.

Dated: March 12, 1993.

Valdes V. Adamkus,
Regional Administrator.

For the reasons stated in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

1. The Authority citation for part 52 continues to read as follows: (Authority 42 U.S.C. 7401-7671q.)
Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c) (89) to read as follows:

§ 52.720 Identification of plan.

(c) * * *

(89) On March 17, 1989, and August 28, 1990, the State of Illinois submitted a revision to the Illinois State Implementation Plan. The revision is contained in subpart J, § 201.281 and subpart L, §§ 201.401-408 of part 210 of title 35 of the Illinois Administrative Code. This revision provides a legally enforceable procedure for continuously monitoring and recording emissions to determine the status of compliance of certain stationary source categories and complies with 40 CFR 51.214 and part 51, appendix P. The rules were adopted by the Illinois Pollution Control Board on December 15, 1988, published (13 Ill. Reg. 2086) and became effective February 3, 1989. The rules were corrected for an omission, published on November 15, 1989, (13 Ill Reg. 1944), and became effective December 5, 1989.

In a November 18, 1991, letter from Bharat Mathur, then Manager, Division of Air Pollution Control, Illinois Environmental Protection Agency (EPA) to Stephen Rothblatt, Chief, Regulation Development Branch, Region 5, USEPA, Illinois committed to notify USEPA of any pending construction or operating permit application during the 30 day public comment period which is part of Illinois’ permit issuance process (Section 203.150). This commitment is part of the administrative record of USEPA’s approval of the Illinois’ operating permit program for the purpose of issuing federally enforceable construction and operating permits).

USEPA reserves the right to deem an operating permit not federally enforceable. Such a determination will be made according to appropriate procedures including operating permit requirements promulgated at 54 FR 27274 (June 28, 1989) and will be based upon whether the permit, permit approval procedures or state or local permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA’s underlying regulations. Among other things, underlying requirements include 40 CFR 51.214 and part 51, appendix P and Illinois’ approved SIP, 40 CFR part 52. Should USEPA deem an operating or construction permit containing alternative monitoring requirements not federally enforceable, the underlying continuous monitoring requirements at Section 201.401 of the State rule would be the Federal requirements contained in the SIP to which the source would be subject. This interpretation of the impact of an operating permit deemed not federally enforceable by USEPA on a source to which it was issued was acknowledged by the State in a March 3, 1993, letter from Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency, to Stephen Rothblatt, Chief, Regulation Development Branch, Region 5, USEPA.

§ 52.743 Continuous monitoring.

(a) Alternative monitoring requirements established under Section 201.402 of Title 35, IAC must be either: Incorporated into a federally enforceable operating permit or construction permit or submitted to USEPA for approval as a revision to the Illinois State Implementation Plan (SIP). Illinois shall set forth alternative emissions monitoring and reporting requirements to satisfy the intent of 40 CFR part 51, appendix P whenever Illinois exempts any source subject to Section 201.401 from installing continuous emission monitoring systems. Illinois may exempt a source if the source cannot install a continuous emission monitoring system because of physical plant limitations or extreme economic reasons, according to the criteria of Section 201.402.

(b) As codified at 40 CFR 52.737 (USEPA’s approval of the Illinois operating permit program for the purpose of issuing federally enforceable construction and operating permits)(1), USEPA reserves the right to deem an operating permit not federally enforceable. Such a determination will be made according to appropriate procedures including operating permit requirements promulgated at 54 FR 27274 (June 28, 1989) and will be based upon whether the permit, permit approval procedures or state or local permit requirements which do not conform with the operating permit program requirements or the requirements of USEPA’s underlying regulations. Among other things, underlying requirements include 40 CFR 51.214 and part 51, appendix P and Illinois’ approved SIP, 40 CFR part 52. Should USEPA deem an operating or construction permit containing alternative monitoring requirements not federally enforceable, the underlying continuous monitoring requirements at Section 201.401 of the State rule would be the Federal requirements contained in the SIP to which the source would be subject. This interpretation of the impact of an operating permit deemed not federally enforceable by USEPA on a source to which it was issued was acknowledged by the State in a March 3, 1993, letter from Bharat Mathur, Chief, Bureau of Air, Illinois Environmental Protection Agency, to Stephen Rothblatt, Chief, Regulation Development Branch, Region 5, USEPA.

40 CFR Part 81

[FR Doc. 93-7909 Filed 4-5-93; 8:45 am]

BILLING CODE 6606-90-P

Redesignating a Portion of Fayette County, Tennessee to Nonattainment for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act), EPA is authorized to require states to redesignate areas (or portions thereof) in the affected State as nonattainment, attainment, or unclassifiable with respect to the National Ambient Air Quality Standard (NAAQS) for lead. In this action, EPA is revising the lead designation for Fayette County, Tennessee, from unclassifiable to nonattainment. Previously, consistent with section 107(d)(3)(A) of the Act, EPA provided notification to the Governor of Tennessee that EPA believes a portion of Fayette County should be redesignated from unclassifiable to nonattainment. The redesignation is based upon a monitored violation of the lead NAAQS.

DATES: This action will be effective June 7, 1993, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADRESSES: Information supporting this action is available for public inspection and copying (a reasonable fee may be charged for copying) during normal business hours at the following agencies:

Public Information Reference Unit, Attn: Jerry Kurtzweg, ANR 443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

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

Division of Air Pollution Control, Tennessee Department of Conservation and Environment, L & G Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Leslie Cox, of the EPA Region IV Air Programs Branch at (404) 347–2864 and at the above address.

SUPPLEMENTARY INFORMATION:

I. General

The EPA is authorized to initiate redesignation of areas (or portions thereof) as nonattainment for lead pursuant to section 107(d)(3) of the Act.
The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

Following the process outlined in section 107(d)(3), on March 13, 1992, EPA Region IV notified the Governor of Tennessee that, based on a monitored violation of the lead NAAQS, EPA believes that a portion of Fayette County should be redesignated as nonattainment for lead. The EPA identified the area in a Federal Register notice published on May 1, 1992, 57 FR 18874. The Governor of Tennessee was required to submit to EPA the designation he considered appropriate for the pertinent portion of Fayette County within 120 days after notification. (See section 107(d)(3)(B).) The EPA must promulgate the redesignation that EPA deems necessary and appropriate, consistent with section 107(d)(3)(c) of the Act.

Section 107(d)(3)(A), 42 U.S.C. 7407(d)(3), sets out definitions of nonattainment, attainment, and unclassifiable areas. These definitions provide the controlling legal standard for any designations or redesignations to the relevant attainment status. The EPA has proposed that a portion of Fayette County, Tennessee, addressed in today's action to be redesignated as nonattainment for lead. A nonattainment area is defined as any area that does not meet, or that significantly contributes to, ambient air quality in a nearby area that does not meet the national primary or secondary ambient air quality standard for the relevant pollutant1 (see section 107(d)(1)(A)(ii)). Thus, in determining the appropriate boundaries for the nonattainment area proposed today, EPA has considered not only the area where the violation of the lead NAAQS is occurring, but also nearby areas which significantly contribute to such violations.

II. Background for Lead

In 1978, when EPA promulgated the lead NAAQS, EPA believed that implementation and maintenance of the lead NAAQS should be in accordance with the SIP requirements set forth in section 110, rather than Part D. The EPA believed that section 107 and Part D requirements were intended by Congress to apply only to NAAQS which were in effect when the Act was revised in 1977. In these cases, SIP's had already been adopted, the attainment dates had already passed, and the SIP's had proven to be adequate. The designation process was intended as a mechanism to initiate new SIP revisions for those existing NAAQS. Since the attainment date for the lead NAAQS at that time had not yet arrived, no lead SIP's had yet been proven inadequate. Consequently, lead did not meet the circumstances which initially resulted in a need for nonattainment designations and plan revisions under Part D. Therefore, EPA did not designate areas for lead upon promulgation of the lead NAAQS in 1978.

The Act, as amended in 1990, clearly defines EPA's authority to designate areas for lead. Initial designations for lead are governed by section 107(d)(5) of the Act, 42 U.S.C. 7407(d)(5). Consistent with that provision, after passage of the 1990 amendments, EPA designated many areas of the country as nonattainment and unclassifiable for lead. See 56 FR 56689 (November 6, 1991). The portion of Fayette County, Tennessee, addressed in today's action was among those designated unclassifiable for lead. See, e.g., 56 FR 56707-56708, 56829 (codified at 40 CFR 81.343).

As described above, EPA is also authorized by the Act, as amended, to initiate the redesignation of any areas (or portions thereof) as nonattainment for lead, pursuant to section 107(d)(3) of the Act, on the basis of air quality data, and, planning and control considerations the Administrator deems appropriate. The EPA believes that monitoring and/or modeling information should be used in establishing lead nonattainment boundaries that are consistent with section 107(d)(1)(A)(i) of the Act. As indicated previously, nonattainment areas consist of any area that does not meet the relevant NAAQS or that significantly contributes to a violation of the relevant NAAQS in a nearby area. On March 13, 1992, EPA Region IV notified the Governor of Tennessee that EPA believed that the portion of Fayette County designated as unclassifiable for lead should be redesignated as nonattainment for lead. In a Federal Register notice published on May 1, 1992, 57 FR 18874, EPA identified Fayette County as a lead area for which EPA had notified the Governor of Tennessee that the area's lead nonattainment area to require some material or significant contribution of a pollutant to a violation of the NAAQS for that pollutant in a nearby area. The Agency believes it is as reasonable to conclude that something greater than a molecular impact is required.

III. Today's Action for Fayette County, Tennessee

In today's action, EPA is redesignating a portion of Fayette County, Tennessee, for lead in accordance with the section 107(d)(3) redesignation process described above. The EPA announced in a notice published on May 11, 1992, (57 FR 18874) that it believed that the portion of Fayette County listed in that notice, should be redesignated as nonattainment for lead based on a monitored violation of the lead NAAQS. The primary and secondary lead NAAQS are 1.5 ug/m³ maximum arithmetic mean averaged over a calendar quarter. (See 40 CFR 50.12.) A monitor near Ross Metals recorded a quarterly value of 4.14 ug/m³ in 1991. On July 14, 1992, Tennessee Department of Environment and Conservation Commissioner, J.W. Luna, responded that the State of Tennessee agreed with EPA that the size of the nonattainment area should be that area encompassed by a circle with a radius of one kilometer. He noted that the circle should be centered on Universal Transverse Mercator Coordinate 267.59 East 3881.30 North (zone 16) instead of the coordinates specified in the March 13, 1992, letter to the Governor—267.59 East 3881.60 North (zone 16). The State's recommended coordinates center on a point located approximately at the midpoint of the lead source complex. The earlier proposal by EPA centers on a point where the monitoring station that recorded the exceedance of the lead NAAQS is located. EPA concurs with this revision. Technical information supporting the redesignation of Fayette County may be found in the docket associated with this notice. This information is available at the address indicated in the ADDRESSES section of this notice.

IV. Significance of Today's Action for Fayette County

Tennessee must submit an implementation plan to EPA within 18 months after promulgation of the nonattainment redesignation, meeting the requirements of Part D, Title I of the Act (see section 191(a) of the Act, 42 U.S.C. 7514(a)) for Fayette County. The
implementation plan must provide for attainment of the lead NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final nonattainment designation (see section 192(a) of the Act, 42 U.S.C. 7514a(a)).

Final Action

EPA is today designating a portion of Fayette County, Tennessee, around the Ross Metals facility as nonattainment based on a monitored violation of the lead NAAQS. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective June 7, 1993. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and three subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. A third notice will finalize the action EPA deems appropriate after considering any comments submitted during the public comment period.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request:

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

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

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, EPA will review the effect of those actions on small entities at the time the State submits these regulations. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects in 40 CFR Part 81
Air pollution control, Lead.

Dated: March 8, 1993.

Patrick M. Tobin,
Acting Regional Administrator.

40 CFR part 81, subpart C, is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7407, 7501-7515, 7601.

2. Section 81.343 is amended by revising the entry for "Fayette County" in the Lead table to read as follows:

§ 81.343 Tennessee.

Designated area                      Designation                Classification

Fayette County (part) Area encompassed by a circle centered on Universal Transverse Mercator coordinate 257.59 E 3881.30 N (Zone 16) with a radius of 1.0 kilometers.
Allotments under Arkansas, is amended

§73.202 [Amended]

PART 73—[AMENDED]

List of Subjects in 47 CFR Part 73

20037. This decision may also be purchased.

This is a Final rule.

SUMMARY: This document allots FM Channel 270A to Mountain Pine, Arkansas, as that community’s first local aural transmission service, in response to a petition for rule making filed on behalf of Mark Jones. See 57 FR 56540, November 30, 1992. Coordinates used for Channel 270A at Mountain Pine are 34°34’18” and 93°10’12”. With this action, the proceeding is terminated.


FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Report and Order, MM Docket No. 92–271, adopted March 8, 1993, and released March 30, 1993. 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, Inc., (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:


§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Mountain Pine, Channel 270A.

Federal Communications Commission.

Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Report and Order, MM Docket No. 92–276; RM–8113, adopted March 8, 1993, and released March 30, 1993. 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, Inc., (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:


§73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Arvin, Channel 223A.

Federal Communications Commission.

Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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. 92–203, adopted March 8, 1993, and released March 30, 1993. 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, Inc., (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:

§73.202 [Amended]
2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 276C2, Okeechobee and adding Channel 276C2, Indiantown.

Federal Communications Commission.

Michael C. Kagar,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.


Because of the potential impact of the proposed rules on existing paging systems and the future assignment of MHz private paging channels from the regional, and national paging systems.

The freeze on new applications for 900 MHz private paging channels from the FCC is set forth in the Commission's order is set forth in the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857-3800.

List of Subjects in 47 CFR Part 90
Business and industry, Channel exclusivity, Private carrier paging, Private land mobile radio services, Radio.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

[FR Doc. 93–7987 Filed 4–5–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Glazing Materials; Denial of Petition for Rulemaking


ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by the American Automobile Manufacturers Association (AAMA), requesting that Federal Motor Vehicle Safety Standard No. 205, Glazing Materials, be amended to allow wider use of rigid plastic glazing materials. After conducting its review, the agency has decided not to grant the petition because use of plastic glazing in areas requisite for driving visibility could result in safety problems involving fracturing, abrasion resistance, strength, and head contact. Because the petitioner did not submit sufficient data related to these safety concerns, the agency has decided to deny the petition. However, the agency continues to be interested in alternative glazing concepts, especially as they relate to the prevention of occupant ejection. The agency therefore encourages organizations and individuals to submit information on this subject to the agency.


SUPPLEMENTARY INFORMATION: Background

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials, specifies performance requirements for glazing materials for use in motor vehicles and motor vehicle equipment. The purpose of the standard is to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency to motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions.


Rigid plastic materials such as those referenced in this rulemaking are considered to be Item 4 and Item 5 glazing. Standard No. 205 permits the use of these rigid plastic materials in areas not requisite for driving visibility, such as in openings in the vehicle's roof. However, the Standard prohibits their use in areas that are requisite for driving visibility.

Petition for Rulemaking

On August 31, 1992, the American Automobile Manufacturers Association (AAMA), submitted a petition for rulemaking, requesting that Standard No. 205 be amended to allow wider use of rigid plastic glazing. The petitioner stated that use of rigid plastic glazing would improve fuel economy because this material weighs approximately half as much as tempered glass of the same thickness. AAMA contended that these weight benefits would be especially important in the development of electric vehicles and other alternative fuel vehicles.

As mentioned above, Standard No. 205 permits the use of rigid plastic glazing only at locations not requisite for driving visibility. The petitioner believed that this limitation was prompted by the fact that plastic glazing is less resistant to abrasion than glass. Nevertheless, AAMA contended that coated plastic glazing resists abrasion well enough to be permitted in some areas requisite for driving visibility. Accordingly, the petitioner requested that Standard No. 205 be amended to...
incorporate a new category of glazing entitled "Item 17—safety plastic material" that could be used in fixed or hinged windows rearward of the "B" pillar, in locations which are requisite for driving visibility. In addition, the petitioner recommended that the plastic glazing be required to meet tests that it behaved similarly to rigid resistance to breakage as well as all the necessary visibility characteristics.

Agency Determination

After reviewing the petition in light of the available information, NHTSA has decided to deny AAMA’s petition to allow plastic glazing in areas requisite for driving visibility. The reasons for this decision are set forth below. The agency notes that the use of plastic glazing in areas requisite for driving visibility raises potential safety problems related to fracturing, abrasion resistance, strength, and head contact. The petitioner did not provide any data addressing these safety concerns.

Fracturing. NHTSA is concerned that use of rigid plastics in the requested areas could create dangerous conditions for occupants. In the 1980s, the agency conducted several side impact tests using different types of rigid plastics in the driver’s side window. While the rigid plastic typically remained intact after popping out of the window frame, the tests indicated that after breaking, rigid plastics could leave sharp pointed shards in the window frame, which an occupant’s head could easily contact.

NHTSA is also concerned about the occupant injury potential of large shards of rigid plastic glazing being propelled inward by impacts with trees, poles, or vehicles. Such situations could result in serious lacerations and puncture injuries. While the Standard currently allows for the use of rigid plastics in certain limited areas of a motor vehicle, use of such rigid plastics in areas requisite for driving visibility behind the "B" pillar would significantly increase the likelihood of an occupant’s head contacting broken rigid plastic glazing.

Abraision resistance. The agency notes that AAMA petitioned for requirements that would subject rigid plastics to less stringent abrasion requirements than the Standard’s present requirements for materials allowed in areas requisite for driving visibility. Accordingly, the agency is concerned that, under the petition, rigid plastics with greater susceptibility to reduced visibility would be allowed.

Head Contact. NHTSA is concerned that if a piece of Item 17 glazing were less than 0.187 inches thick, then the drop height would be 10 feet. Similarly, Test No. 13 (Ball Test) strength test has a drop height of 12 feet when the plastic has a thickness of 0.187 inches. AAMA petitioned to change the drop height to 10 feet for glazing less than 0.187 inches thick. The agency notes that the petitioner did not explain the reason for requesting the lower height.

In accordance with 49 CFR part 552, the agency has completed its technical review of the petition. Because the petitioner did not submit sufficient data related to these safety concerns, the agency has decided to deny the petition. The agency continues to be interested in alternative glazing concepts, especially as they relate to the prevention of occupant ejection.

Future Considerations

NHTSA is interested in exploring alternative glazing concepts such as requested in the AAMA petition that might, in part, be used to reduce the likelihood of ejection through areas of glazing. In fact, the agency currently is conducting research in this area. Although the agency is denying the AAMA petition for lack of supportive data, interested persons are invited to submit technical data or comments about plastic glazing materials to the Docket Section, National Highway Traffic Safety Administration, room 5106, 400 Seventh Street, SW., Washington, DC 20590.

The Rohm & Haas Company has presented technical information about plastic glazing to agency representatives. This information has been placed in the public docket.
SUMMARY: NMFS designates the coastal-migratory stock of bottlenose dolphins along the U.S. mid-Atlantic coast as depleted under the Marine Mammal Protection Act (MMPA). This action is required by the MMPA when a species or population stock is determined to have fallen below its optimum sustainable population (OSP) level. NMFS has determined that the stock is below a level that can maintain a sustainable population (OSP) level. NMFS concluded that the coastal-migratory stock of bottlenose dolphins (Tursiops truncatus) died and washed ashore along the U.S. east coast from New Jersey to central Florida. Based on the best available scientific information, NMFS concluded that the coastal-migratory stock of bottlenose dolphins along the mid-Atlantic coast had declined by more than 50 percent. NMFS published an advance notice of proposed rulemaking (ANPR) (54 FR 41654, October 11, 1989) indicating that it was considering listing the stock as depleted and requesting additional information. NMFS then published a proposed rule (56 FR 40594, August 15, 1991) with a 45-day comment period. Both the ANPR and the proposed rule contained a background discussion of specific information leading to this rule. Background previously presented will not be repeated here.

Comments and Responses

After the comment period closed, some concerns were raised about the model employed in making the initial determination. Even though conservative values had been employed, there was concern that a broader range of values should have been used for the model parameters. It was also noted that more recent information on some of the population dynamics parameters has been published since the initial model was developed.

NMFS responded to these concerns and conducted a risk analysis based on the model initially used in making the determination, incorporating more recent information and providing for a range of values for the model parameters. In this analysis of population dynamics, uncertainty in model input parameters was incorporated via Monte Carlo methods, wherein the underlying model was iterated a large number of times (in this case, 1,000 iterations were run) with randomly selected, independent combinations of model parameters, based on measured or assumed distributions of the parameters. Population status in 1986 relative to 1987 as a result of the die-off was modeled as:

\[ R_{\text{esp}} = \left( 1 - M^{*} \text{multi} \right) \cdot M \]

where \( R_{\text{esp}} \) is population status in 1986 relative to 1987, \( M \) represents annual percentage natural mortality rate, and \( \text{multi} \) represents the estimated multiplier of mortality due to the die-off as defined in Scott et al. (1988). Uncertainty in \( M \) was incorporated in the analysis by randomly assigning values from a uniform distribution ranging from 0.056 to 0.1. Uncertainty in \( \text{multi} \) was also incorporated by an independent random draw from a uniform distribution with a range from 7.98 to 10.97. The endpoints of this range represent the lowest and highest ratios of strandings reported from June 1987 through April 1988 to the number reported in each of the previous 3 years' data for the same months and areas of the coast.

The dynamics of the bottlenose dolphin stock before and after the die-off were assumed to be adequately described by the Pella-Tomlinson delay difference model. This model is described in Scott et al. (1988). The affected bottlenose dolphin population was assumed to be in equilibrium prior to the die-off. This assumption allowed estimation of status relative to carrying capacity under a range of estimated human-induced mortality rates. Human-induced mortality rates were estimated from stranding data as described in Scott et al. (1988) as:

\[ F = M'(t/(t - p)) - 1 \]

where \( F \) represents the human-induced mortality rate (annual percentage), \( M' \) represents the annual natural mortality rate, and \( p \) represents the proportion of strandings classified as resulting from human activities during the 3-year period immediately prior to the die-off. Uncertainty in the estimate of \( p \) was incorporated by recalculating \( p \) for each iteration based on the number of successes (human-induced mortality classifications) from a random draw of a binomial distribution with parameters \( p = 0.056 \) (36/66) and \( 1 - p = 0.944 \). Uncertainty about lags in the population dynamics was incorporated via a random draw from a uniform distribution ranging from 0-14 years.

Uncertainty in maximum net productivity level (MNPL) and in the population maximum annual rate of increase (ROI) was incorporated via random draws from uniform distributions with ranges of 0.6-0.8 and 0.02-0.06, respectively. The models were used to project population status until the year 2010. For each year of these projections, the frequency of model results indicating that population status was less than MNPL was used as a model-conditional estimate of the probability that the modeled population was depleted. Sensitivity of the model results to individual parameters was examined by fixing each parameter as a constant value within the defined range.

The simulation incorporating uncertainty of all input parameters was considered the best assessment of the status of the bottlenose dolphin stock relative to MNPL, which is the lower limit of OSP. In all of the simulations considered, the models estimated that it is highly likely that the population is currently below MNPL. In all models considered, results indicated there were at least even odds that the population would remain below MNPL through the turn of the century and that there is a non-negligible chance that the population could remain below MNPL beyond the year 2010. The report containing the additional modeling is available (see FOR FURTHER INFORMATION CONTACT).

Ten written comments were received in response to the proposed rule from a Federal agency, a coalition representing aquaria, conservation groups, and other interest parties. Eight commenters...
supported the rule, and two opposed it. Some commenters were under the impression that the rule applied to either all bottlenose dolphin populations or to all populations along the Atlantic and Gulf coasts. The designation will only apply to the coastal-migratory stock along the U.S. mid-Atlantic coast. It does not apply to offshore stocks in the Atlantic, resident coastal populations along the Atlantic coast, or stocks in the Gulf of Mexico.

Several commenters made recommendations for recovery actions. These recommendations are not germane to the designation decision, but will be used to prepare the conservation plan for this stock. Specific comments are addressed below:

Comment: At present, there is no comprehensive estimate of the size of the stocks of bottlenose dolphins, and an OSP determination cannot be made without such information.

Response: NMFS has conducted survey work on the population in question, and the estimates of population were contained in the ANPR. However, the determination that this stock is depleted was based primarily on calculations using natural mortality figures and mortality figures involved in the 1987–88 epizootic. These calculations indicated that the mortality rate during the event was more than 50 percent.

Comment: The dolphin population is abundant and healthy. Herds in excess of 100 individuals were documented off Virginia Beach in August 1991.

Response: No documentation was submitted to support this comment. Regardless, the existence of herds in excess of 100 individuals does not in itself allow any inference about stock status relative to OSP. Observations of abundance are useful, without regard to some measure of the environment’s carrying capacity, is not sufficient for OSP determinations. Furthermore, such observations, in the absence of comparisons to historic abundance levels or other controls in the sense of experimental design, provide no support for the conclusion that the “dolphin population is abundant and healthy.”

Comment: Population surveys during and after the epizootic do not bolster the case for depletion.

Response: No documentation was provided as to the “population surveys” cited by the commenter. If there are surveys other than those conducted by NMFS that NMFS is unaware of, NMFS would like the opportunity to review them and the methodology involved.

NMFS’ own surveys conducted during the epizootic indicate that dolphin density was lower in the offshore zone than estimated from pre-epizootic surveys. No comparable population survey data are yet available to draw inferences about the coastal population of dolphins. However, the model used to determine that this stock is depleted does not depend directly on abundance estimates, but instead is a population dynamics model.

Comment: NMFS did not consider whether the population was initially above carrying capacity.

Response: There are no data of which NMFS is aware to indicate that the pre-epizootic population could have been above carrying capacity. In making the determination that this stock is depleted relative to OSP, NMFS took the conservative approach and used recent population estimates, rather than higher figures of historical abundance. These recent estimates of the population size along the mid-Atlantic coast before the epizootic are well below turn-of-the-century abundance estimates based on cumulative removals from shore stations harvests. Even if the historical abundance estimates indicated that the turn-of-the-century population was above carrying capacity, the use of recent abundance estimates would put the pre-epizootic population below the historical carrying capacity.

Comment: Dolphin mortality was overestimated in the model because NMFS assumed that only 50 percent of dead dolphins stranded. A higher percentage (70–85 percent) of the animals that died were documented in Virginia because of an increase in effort to recover carcasses due to the publicity surrounding the epizootic.

Response: The commenter provided no documentation to support the conclusion that a higher percentage of animals were recovered in Virginia, and it is unlikely that 70–85 percent of the dead animals would strand. On NOAA cruises during the mortality event, dead animals were observed as much as 10 miles (18.5 km.) offshore. Aerial overflights also observed dead floating animals offshore. Dead dolphins are initially negatively buoyant and subject to predation. Even in semi-enclosed areas where there have been individual animal identifications, no recovery estimate approaches 70 percent of total mortality. To assume that 70–85 percent of the dead animals were recovered is unrealistic.

The models used to make the determination that this stock is depleted were based on actual strandings in areas where beach coverage had been good in prior years (index areas) rather than on an assumption that only 50 percent of the dead animals had been recovered. Restricting the analysis to beachfront index areas where high coverage rates were known to occur during the pre-epizootic period results, the magnitude of increase in strandings during the epizootic was more than ten times greater than pre-epizootic rates. NMFS recognized that pre-epizootic coverage of Virginia beaches had not been sufficient to be useful in making the determination of depletion, and thus Virginia data were not used in the weighting. NMFS’s notes, however, that Virginia data indicated that the difference between pre-epizootic and epizootic stranding rates was even greater in Virginia, i.e., 15–20 times pre-epizootic mortality rates.

Comment: NMFS estimated normal annual mortality at 7–14 percent.

Response: The range of natural mortality rates assumed applicable to the affected dolphin population came from research results published in the scientific literature. Since the first status assessment was completed by NMFS, additional information on the range of natural mortality rates has become available. In response to the more recent information, NMFS revised the natural mortality rates assumed applicable to the dolphin population to a range from 5.6 to 10 percent per year. As indicated above, a revised stock assessment was conducted using various values within this range. The value actually used in the initial model (7 percent) is well within this range. These values are widely accepted in the scientific literature.

Comment: NMFS assumed that the stranding rate is proportional to natural mortality.

Response: The analysis did assume that the stranding rate was a consistent index of mortality rate. Without anomalous wind and weather conditions, there should be a consistency in the percentages of dead animals that strand. There is no evidence to suggest that anomalous oceanographic or weather patterns could have accounted for the observed difference between the 1987–88 stranding rate and the average of the prior 3 years. Furthermore, such anomalous conditions are unlikely over a 9-month period and a large geographical range (New Jersey to Florida). In order to prevent a possible bias created by increased effort in searching for stranded animals in areas where strandings had not previously been documented, NMFS only used index areas where responses to strandings had been consistent over the years in making its determination.
The case is based largely on a number of assumptions that will be difficult, if not impossible to verify. The assumptions applied in the analysis are biologically reasonable. The parameter ranges used in the analysis result in a large range of reductions from the pre-epizootic relative abundance level. In fact, the estimated reduction in relative abundance as a result of the epizootic of over 50 percent may be a conservative estimate of reduction from carrying capacity. The range of values used supports the determination that this stock is depleted.

Comment: Estimates of mortality should properly be based on consistent pre- and post-event population indices. Response: Such a method would be a direct method of assessing the impact of the mortality on the dolphin population, but it is not the only method for assessing the impact. The methodology used to make the determination that this stock is depleted, as discussed in the background to the proposed rule, is scientifically robust.

Comment: Assessment of impact using the number of animals that stranded relative to the population depends on the accuracy of abundance estimates and the relationship between carcass counts (probably biased by uneven reporting) and the true-mortality.

Response: The method discussed in the comment was examined by NMFS and was rejected for use in the assessment. The determination that this stock is depleted is based primarily on calculations using the widely accepted natural mortality rates discussed above and the mortality figures involved in the epizootic.

Comment: Available population data are inadequate to make determinations about stock status relative to OSP. The wide range in population estimates necessary to achieve 95-per cent confidence limits is further evidence that the current information relating to depletion is weak.

Response: The model used to assess stock reduction did not utilize abundance estimates directly, and so the impression of the available estimates is not relevant to the determination. A range of parameter values that bracket the stock-specific parameter values were used in the assessment. This range of values used supports the determination that this stock is depleted at a 90-percent confidence interval.

Comment: The epizootic was a natural event.

Response: Whether it was natural or not is irrelevant to a determination that the population is below OSP.
Juneau, AK 99802, telephone 907-586-7221; Rolland A. Schmitten, Regional Director, NMFS, Northwest Region, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115, telephone 206-526-6140; or Donald McCaughran, Executive Director, IPHC, P.O. Box 5009, University Station, Seattle, WA 98105, telephone 206-624-1836.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America. On behalf of the IPHC, these regulations are published in the Federal Register to provide notice of their effectiveness and to inform persons subject to the regulations of the restrictions and requirements established therein.

The IPHC held its annual meeting on January 25-29, 1993, in Vancouver, B.C., and adopted regulations for 1993. The substantive changes from the previous IPHC regulations published at 57 FR 12878 (April 14, 1992) include: (1) New commercial catch limits and fishing seasons; (2) new treaty Indian halibut catch limits; (3) new sport fishing limits in Area 2A, which includes all waters off the coasts of Washington, Oregon, and California; (4) an experimental fishery in a new subarea 4D-N, in the portion of Area 4D north of latitude 62°30'00" N., authorized for 1993 only, with a separate quota and a 1,000-pound (0.45 metric ton (mt)) trip limit through August 10; (5) new careful release regulations; (6) a new logbook requirement for recording personal use catch; (7) deletion of the three-halibut possession limit and the 32-inch (81.3 cm) minimum size limit in the Area 2B sport fishery because they were not implemented by Canada and reversion of the possession limit back to the same as the bag limit; and (8) deletion of the Area 2A sport seasons and bag limits because they are being implemented by the Secretary of Commerce (Secretary) under section 5 of the Halibut Act, 16 U.S.C. 773c.

Because the commercial fishery in Area 2A is likely to exceed the sub-quota for this fishery during the first 10-hour opening, the IPHC will need to impose vessel trip limits. However, because it is unknown at this time how many vessels might participate in the Area 2A fishery, the IPHC staff will determine and announce the vessel trip limits necessary to avoid exceeding the sub-quota prior to the July 27 opening when better information is available on the number of vessels that may participate in the fishery.

Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary shall have general responsibility to carry out the Halibut Convention between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to adopt regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC.

Pursuant to this authority, NOAA directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocation be necessary.

The North Pacific Fishery Management Council (NPFMC) did not develop any additional Pacific halibut regulations for 1993. The NPFC’s previous regulations in §301.11(d) (55 FR 23085, June 6, 1991); and §§301.11(e), 301.13 (a), (b), (e), (f), (g), (i), (l), and (j), and 301.16(h) (53 FR 20327, June 3, 1988) also have been implemented by the IPHC and remain in effect without change except that §§301.13 and 301.16 have been renumbered as 301.14 and 301.17 respectively. The NPFC’s previous regulation in §301.10(g) (56 FR 16618, April 29, 1991) also is republished for the convenience and information of the public.

The PFMC has prepared catch sharing plans since 1988 to allocate the TAC of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California. For 1993, the PFMC recommended the continuation of the proportionate sharing between user groups approved for 1992, with some revisions within the sport fisheries. A complete discussion of the PFMC’s recommendation and background on the development of the 1993 Plan and the proposed sport fishing regulations are published in the Federal Register on February 19, 1993 (58 FR 9138) with a request for public comments. This action responds to public comments on the proposed Plan and proposed sport regulations and announces approval of the Plan and the final rule.

Comments and Responses on the Secretarial Proposed Rule and the Catch Sharing Plan

Comments on the proposed 1993 Catch Sharing Plan were received from the States of Washington and representatives of the treaty Indian tribes. Their comments are summarized below with responses.

Comment 1: The tribal fisheries structuring should ensure that the intent of the Plan for year-round tribal ceremonial and subsistence fishery is not affected by overages in the tribal commercial fishery as occurred in 1991.

Response: The 1993 Plan stipulates that the allocations for all user groups are distributed as sub-quotas to ensure that any overage or underage by any one user group will not affect achievement of the allocation of TAC for other user groups. The Plan further stipulates that the tribal commercial and subsistence fishery and the tribal commercial fishery are to be managed separately; any overages in the commercial fishery should not affect the ceremonial and subsistence fishery. This intent has been incorporated into IPHC regulations.

Comment 2: The Washington Department of Fisheries, in consultation with anglers and IPHC staff, recommended that the Puget Sound sport fishery opening date be delayed 2 days so that the final weekend day of the season, July 18, can be open.

Response: The recommended change is within the PFMC’s allocation objectives for Washington sport fisheries in 1993 as described in the plan consistent with the Catch Sharing Plan. Therefore, the proposed regulations at §301.29(d)(2)(f) were revised to provide the additional opening on July 18 and the opening date was changed to open on Thursday, May 13. The IPHC has concurred that these changes in dates will not cause the projected catch for this season to be exceeded.

Comment 3: The Washington Department of Fisheries is proposing to modify in State regulations the Bonilla-Tatoosh line that separates inside and ocean sport fishing areas to make it more easily detected by sport users. The State recommends that the Bonilla-Tatoosh line in the proposed halibut sport regulations be modified to intersect the buoy off Dunute Rock and then proceed to Tatoosh Island so that the line would be consistent with their proposed change for other sport fisheries. The revised line would be from Bonilla Point (latitude 48°35.44’N, longitude 124°43’00”W) to the buoy adjacent to Dunute Rock.

The 1993 Plan as modified, with responses, has been approved and will be submitted to the IPHC for final action.
Flattery (latitude 48°22'55"N., longitude 124°44'50"W.) to Cape Flattery (latitude 48°23',30"N., longitude 124°43'42"W.).

Response: The Bonilla-Tatoosh line defined in the proposed rule is the traditional line used to delineate the boundary of "inside" State waters and is used as the northeastern boundary of the fishery management area for the Federal fishery management plans for salmon and groundfish. Because of the traditional use of this line for multiple fishery management and enforcement purposes, NMFS does not believe it is appropriate to change the definition of the line without providing public notice and comment period and ensuring that the views of the Coast Guard and Department of State are considered before the line is changed. NMFS will consider publishing a notice of a proposed change to the Bonilla-Tatoosh line for the 1994 sport fishing regulations if the State makes such a request before publication of the proposed regulations for 1994. Accordingly, the proposed regulations at § 301.20(d) have been modified as described in the responses to comments. Further, the numbering of the proposed sport regulations have been changed to § 301.21 in the final rule because a new § 301.13 was added by the IPHC. Also, to maintain consistency with IPHC regulations, § 301.21(f)(2) of the final sport regulations was modified to clarify that it was promulgated by NMFS, and § 301.21(d)(4) was renumbered (d)(5) because, at the IPHC's request, a new § 301.21(d)(4) was inserted.

NMFS also announces Secretarial approval of the 1993 catch sharing plan recommended by the PPMC. The comments described above did not result in any changes to the Plan. Specific regulations implementing portions of the 1993 Plan were adopted by the IPHC and published herein. NMFS has implemented the sport fishery portion of the catch sharing plan, as applied to the Area 2A TAC, in § 301.21(d) of these regulations. The final approved 1993 Catch Sharing Plan for Pacific halibut in Area 2A is described below.

1993 Catch Sharing Plan for Area 2A

The 1993 Catch Sharing Plan (Plan) allocates 25 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A-1, and 75 percent to non-treaty Indian fishermen in Area 2A. The allocation to non-Indian fishermen is divided 50 percent to commercial users and 50 percent to sport users. The sport allocation is further divided 61 percent to areas off Washington and 39 percent to areas off Oregon and California. The sport fisheries are divided into geographic areas, each having separate seasons, quotas, bag limits, and other restrictions. The Washington sport allocation applies to coastal and inland waters off Washington, as well as waters off the coast of Oregon north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast. The allocations are distributed as sub-quotas to ensure that any overage or underage by any one user group will not affect achievement of the allocation of TAC for other user groups. The Plan distributes the 600,000-pound (272.2 mt) TAC in Area 2A as sub-quotas between users as follows:

<table>
<thead>
<tr>
<th>Sub-quota</th>
<th>Pounds</th>
<th>Mt</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treaty Indian sub-quota</td>
<td>150,000</td>
<td>68.0</td>
</tr>
<tr>
<td>Non-Indian Commercial sub-quota</td>
<td>225,000</td>
<td>102.1</td>
</tr>
<tr>
<td>Washington Sport sub-quota</td>
<td>137,250</td>
<td>62.3</td>
</tr>
<tr>
<td>Oregon Sport sub-quota</td>
<td>87,750</td>
<td>39.8</td>
</tr>
<tr>
<td>Total</td>
<td>600,000</td>
<td>272.2</td>
</tr>
</tbody>
</table>

The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described below.

Treaty Indian Fisheries

Twenty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in Subarea 2A-1, which includes that portion of Area 2A north of 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude (defined in 50 CFR 301.20(c)). The treaty Indian allocation is to provide for a tribal commercial fishery and a ceremonial and subsistence fishery. These two fisheries are to be managed separately; any overages in the commercial fishery would not affect the ceremonial and subsistence fishery. The commercial fishery will be managed to achieve an established sub-quota, while the ceremonial and subsistence fishery will be managed for a year-round season. The tribal ceremonial and subsistence fishery will commence on January 1 and continue year-round through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person. The tribal allocation of ceremonial and subsistence catch for a year-round fishery in 1993 is 14,000 pounds (6.4 mt). The tribal commercial fishery is allocated a sub-quota of 136,000 pounds (61.7 mt), which is equal to the tribal allocation of 150,000 pounds (68.0 mt) less the tribal estimate of ceremonial and subsistence catch for the year-round season. The tribal commercial fishery will commence on March 1 and continue through October 31 or until the tribal commercial sub-quota is taken, whichever occurs first.

Commercial Fisheries (Non-Indian)

The non-Indian commercial fishery is allocated 37.5 percent of the Area 2A TAC. The Plan does not address the structuring of the commercial season(s). The commercial fishery opening date(s), duration, and vessel trip limits for Area 2A, as necessary to ensure that the sub-quota for this fishery is not exceeded, were determined by the IPHC.

Sport Fisheries (Non-Indian)

The non-Indian sport fisheries are allocated 37.5 percent of the Area 2A TAC. The sport fishery allocation is further divided, with 22.9 percent of the Area 2A TAC to areas off Washington/northern Oregon, and 14.6 percent to areas off Oregon/California. The sport fisheries are divided into five geographic areas, each having separate seasons, sub-quotas, bag limits, and other restrictions as necessary to achieve allocation objectives. The Washington sport allocation applies to the coastal and inland waters off Washington and includes the north coast of Oregon, north of Cape Falcon. The Oregon sport allocation applies to waters off Oregon south of Cape Falcon and includes the California coast.

The Washington sport fisheries structure is based on the following allocation objectives adopted by the PPMC.

1. Provide a stable sport opportunity for anglers in inside waters, and provide incentive to anglers to fish in Puget Sound with a two fish bag limit.
2. Maximize the season length for viable fishing opportunity on the remote halibut grounds off northwest Washington, and stagger the seasons to spread out this opportunity to maximize the benefit to anglers who utilize these grounds.
3. On the south coast, structure the season to ensure stability, and maximize
the season length during time periods when sport salmon fishing opportunities are not available.

The Oregon sport fisheries structuring is based on the following allocation objectives adopted by the PFMC.

1. Provide special opportunity for anglers out of Pacific City and Gearhart, where a long-standing relatively small fishery has existed.
2. Provide early opportunity to anglers along the central and south coast of Oregon, especially Newport anglers.
3. Provide opportunity for anglers out of all Oregon ports south of Cape Falcon, especially small boat anglers.
4. Provide a short period of opportunity for all ports south of Cape Falcon and allow charterboats and larger private boats to fish productive areas in deeper water off Newport.
5. Provide anglers in California the opportunity to fish in a fixed season. The details of the sport fisheries structuring for the five sport fishery areas are as follows.

**Washington Inside Waters (Puget Sound and Straits)**

This area is allocated 32.5 percent of the Washington sport sub-quota, with which is 44,606 pounds (at the 1993 TAC of 600,000 pounds (272.2 mt)). The season in this area is open 6 days per week (closed Wednesdays) from May 13 to July 18 for a projected catch of 4,160 pounds (20.2 mt). Due to inability to monitor the catch in this area inseason, no inseason adjustments will be made, and estimates of actual catch will be made post-season. The daily bag limit is two halibut per person per day with no size limit.

**Washington North Coast Between the Straits and Queets River**

This area is allocated 62.3 percent of the Washington sport sub-quota at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt). The season will open 2 days per week (Thursdays and Fridays) from May 20 to June 10. If allowable harvest for this area remains after this season, it will open again on July 2 on Fridays only and continue until September 30 or until the area sub-quota is taken, whichever occurs first. The daily bag limits is one halibut per person per day with no size limit.

**Southern Washington/Northern Oregon (Between Queets River and Cape Falcon, OR)**

This area is allocated 5.2 percent of the Washington sport sub-quota at the 1993 Area 2A TAC of 600,000 pounds (272.2 mt). The season will open 2 days per week (Thursdays and Fridays) from May 20 to June 10. If allowable harvest for this area remains after this season, it will open again on July 2 on Fridays only and continue until September 30 or until the area sub-quota is taken, whichever occurs first. The daily bag limits is one halibut per person per day with no size limit.

**South of Cape Falcon to the California Border**

This area is allocated 97.4 percent of the Oregon sport sub-quota. The daily bag limit for all seasons in this area is two halibut per person per day, one with a minimum 32-inch size limit and the second with a maximum 50-inch size limit. Eighty percent of this area sub-quota is for a May 1 opening that is divided into two regions, each with a sub-quota. The remainder is for a July 12 opening (3 percent) and an August 4 opening (17 percent). At the 1993 Area 2A TAC of 600,000 pounds (272.2 mt) the four seasons are as follows.

1. The region south of Cape Falcon and north of the Nestucca Bay entrance (latitude 45°09'45" N) is allocated 3 percent of the area sub-quota for a May 1 opening. The season will open on May 1 and continue every day until July 11 or until 3 percent of the sub-quota is estimated to have been taken, whichever occurs first.
2. The region south of Nestucca Bay entrance and north of California border is allocated 77 percent of the area sub-quota for a May 1 opening. The season will open on May 1 and continue 5 days per week (Wednesday through Sunday) until July 11 or until 77 percent of the sub-quota is estimated to have been taken, whichever occurs first.
3. This season, applying to the entire area, will open on July 12 in waters inside the 30-fathom curve and will continue every day until August 3 or until 3 percent of the sub-quota is estimated to have been taken, whichever occurs first.
4. The last season, also applying to the entire area, will open on August 4, with no depth restrictions. The fishery is open 3 days per week, Wednesday through Sunday until September 30 or until the area sub-quota is estimated to have been taken, whichever occurs first. Any poundage remaining after the earlier seasons will be added to the next season. If poundage added to the last season is sufficient to allow for additional fishing opportunity, an inseason action should be taken to add additional open days to each week.

**California—South of the California Border**

This area is allocated 2.6 percent of the Oregon sport sub-quota. The daily bag limit is one halibut per person per day with a minimum 32-inch size limit.

At the 1993 Area 2A TAC of 600,000 pounds (272.2 mt), the season will commence on May 1 and continue every day until September 30 for a projected catch of 2,281 pounds (1.03 mt). Due to the inability to monitor inseason, no inseason adjustments will be made and estimates of actual catch will be made post-season.

**Classification**

International Pacific Halibut Commission Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, Jensen vs. NMFS, 512 F. 2d 1789 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act (APA) and E.O. 12291 do not apply to this notice of the effectiveness and content of the IPHC regulations. Because notice of proposed rulemaking is not required, the Regulatory Flexibility Act does not apply. These regulations do not contain a collection-of-information requirement subject to the Paperwork Reduction Act. This notice of final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12866.

**Secretarial Rule and Catch Sharing Plan**

A regulatory impact review prepared by the PFMC for the 1992 Plan to fulfill the requirements of E.O. 12291 indicates that actions taken under the Plan are not "major" and a Regulatory Impact Analysis is not required. These findings also apply to the 1993 Plan because it is a continuation of the prior Plans approved in 1990, 1991, and 1992. Because the 1993 Plan is consistent with catch sharing plans that have been in place since 1990, it will not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. An Environmental Assessment (EA) was prepared for the 1990 IPHC regulations incorporating the 1990 Catch Sharing Plan in accordance with the National Environmental Policy Act (NEPA), and the Assistant Administrator determined that there would be no significant impact on the human environment resulting from the regulations and that preparation of an environmental impact statement was not required by section.
The environmental impacts of the 1993 Catch Sharing Plan and alternatives are no different than those evaluated in the 1990 EA. Therefore, this action is categorically excluded from the NEPA requirements to prepare another EA in accordance with NOAA Administrative Order 216–6, Section 6.02a.3. Copies of the 1990 EA and the 1992 regulatory impact review are available (see Addresses).

The APA states that regulations will not become effective until 30 days after publication in the Federal Register unless the agency finds good cause for an earlier effective date. NMFS finds good cause to waive the 30-day cooling-off period in order to implement the sport fishing regulations by May 1, 1993. If this rule is not effective by May 1, 1993, sport fishing for Pacific halibut would not open as expected by anglers on May 1, 1993. This would cause adverse impacts on anglers traveling to coastal communities expecting to be able to fish for Pacific halibut on May 1st as well as negative economic impacts on the coastal communities and charterboat operations that are dependent on Pacific halibut fishing at this time of year. Therefore, a delay in implementation after May 1 is contrary to the public interest.

The 1983 Catch Sharing Plan and the Catch Sharing Plan were submitted for review by the responsible state agencies of California, Oregon, and Washington. The State of California and Oregon did not determine of consistency. The States of California and Oregon did not infer any State, federal, or Provincial officer authorized to enforce this part, including, but not limited to, the National Marine Fisheries Service (NMFS), Canada’s Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the U.S. Coast Guard (USCG).

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

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

**Land**, with respect to halibut, means to bring to shore and to offload;

**License** means a halibut fishing license issued by the Commission pursuant to §301.3 of this part;

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

**Operator**, with respect to any vessel, means the master or other individual on board and in charge of that vessel;

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

**Person** includes an individual, corporation, firm, or association;

**Regulatory area** means an area referred to in §301.6 of this part;

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

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

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

### List of Subjects in 50 CFR Part 301

**Fishing, Treaties.**

Dated: March 31, 1993.

Samuel W. McKeen,

**Acting Assistant Administrator for Fisheries,**

**National Marine Fisheries Service.**

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

### PART 301—PACIFIC HALIBUT FISHERIES

#### Sec.

301.1 **Short title.**

301.2 **Interpretation.**

301.3 **Licensing vessels.**

301.4 **Inseason actions.**

301.5 **Application.**

301.6 **Regulatory areas.**

301.7 **Fishing periods.**

301.8 **Closed periods.**

301.9 **Vessel clearance area.**

301.10 **Catch limits.**

301.11 **Fishing period limits.**

301.12 **Size limits.**

301.13 **Careful release of halibut.**

301.14 **Vessel clearance area.**

301.15 **Logs.**

301.16 **Receipt and possession of halibut.**

301.17 **Fishing gear.**

301.18 **Retention of tagged halibut.**

301.19 **Supervision of unloading and weighing.**

301.20 **Fishing by United States treaty Indian tribes.**

301.21 **Sport fishing for halibut.**

301.22 **Previous regulations superseded.**

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

#### §301.1 Short title.

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

#### §301.2 Interpretation.

(a) In this part, **Automatic hook stripper (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks; Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator; Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered; Commission means the International Pacific Halibut Commission; Daily bag limit means the maximum number of halibut a person may take in any calendar day from Convention waters; Fishery officer means any State, Federal, or Provincial officer authorized to enforce this part, including, but not limited to, the National Marine Fisheries Service (NMFS), Canada’s Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the U.S. Coast Guard (USCG); Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area; Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period; Land, with respect to halibut, means to bring to shore and to offload; License means a halibut fishing license issued by the Commission pursuant to §301.3 of this part; Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party; Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel; Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments); Person includes an individual, corporation, firm, or association; Regulatory area means an area referred to in §301.6 of this part; Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached; Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor. (b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

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

#### §301.3 Licensing Vessels.

(a) No person shall operate or fish for halibut from a United States vessel, nor possess halibut on board a United States vessel, used either for commercial...
fishing or as a charter vessel, unless the Commission has issued a license in respect of that vessel.
(b) No person shall operate or fish for halibut from a Canadian vessel, or possess halibut on board a Canadian vessel, used as a charter vessel, unless the Commission has issued a license in respect of that vessel.
(c) A license issued in respect of a vessel referred to in paragraphs (a) and (b) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by fishery officers of the Contracting Parties.
(d) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed “Application for Vessel License for the Halibut Fishery” form.
(e) Application forms may be obtained from fishery officers of either Contracting Party, or from the Commission.
(f) Information on “Application for Vessel License for the Halibut Fishery” form must be accurate.
(g) The “Application for Vessel License for the Halibut Fishery” form shall be completed and signed by the vessel owner.
(h) Licenses issued under this section shall be valid only during the year in which they are issued.
(i) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.
(j) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.
(k) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

§301.4 Inseason actions.
(a) The Commission is authorized to establish or modify regulations during the season after determining that such action:
(1) Will not result in exceeding the catch limit established preseason for each regulatory area;
(2) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and
(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.
(b) Inseason actions may include, but are not limited to, establishment or modification of the following:
(1) Closed areas;
(2) Fishing periods;
(3) Fishing period limits;
(4) Gear restrictions;
(5) Recreational bag limits;
(6) Size limits; or
(7) Vessel clearances.
(c) Inseason changes will be effective at the time and date specified by the Commission.
(d) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

§301.5 Application.
(a) This part applies to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.
(b) Sections 301.6 to 301.19 of this part apply to commercial fishing for halibut.
(c) Section 301.20 of this part applies to fishing for halibut by United States treaty Indian tribes in the State of Washington.
(d) Section 301.21 of this part applies to sport fishing for halibut.
(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§301.8 Regulatory areas.
The following areas shall be regulatory areas for the purposes of the Convention:
(a) Area 2A includes all waters off the states of California, Oregon, and Washington;
(b) Area 2B includes all waters off British Columbia;
(c) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running 205° true from said light;
(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Yakik (latitude 57°41'15" N., longitude 155°35'50" W.) to Cape Iloik (latitude 57°17'17" N., longitude 154°47'53" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 158°00'44" W.), then 140° true;
(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutka (latitude 54°29'50" N., longitude 164°20'00" W.) and south of latitude 54°49'00" N., in Isanotski Strait;
(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.9 of this part that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.;
(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.;
(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9 of this part that are east of longitude 171°00'00" W., south of latitude 58°00'00" N., and west of longitude 160°00'00" W.;
(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°30'00" W.;
(j) Subarea 4D-N includes that portion of Area 4D that is north of latitude 62°30'00" N.; and
(k) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9 of this part, east of longitude 168°30'00" W., and south of latitude 65°34'06" N. See Figure 1 of this part.

§301.7 Fishing periods.
(a) The fishing periods for each regulatory area are set out in the following table and apply where the catch limits specified in § 301.10 of this part have not been taken.
### Commercial Fishing Periods in Each Regulatory Area

<table>
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<tr>
<th></th>
<th>2A</th>
<th>2B</th>
<th>2C–3A–3B</th>
<th>4A</th>
<th>4B</th>
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*Data to be announced by the Commission.*

### Commercial Fishing Periods in Each Regulatory Area—Continued

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<th>4E</th>
<th>4C</th>
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<td>6/14–*</td>
<td>6/16–*</td>
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</tbody>
</table>

(b) Each fishing period in Area 2A shall begin at 0800 hours and terminate at 1800 hours Pacific Standard or Pacific...
Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(c) The fishing period in Area 2B shall begin and terminate at 1200 hours Pacific Standard Time, on the dates set out in the table to this section, unless the Commission specifies otherwise.

(d) Except as provided in paragraph (a) of this section, each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, and subarea 4D-N shall begin and terminate at 1200 hours Alaska Standard or Alaska Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(e) The 6/06 through 8/07 fishing periods inclusive in Area 4B shall begin at 0800 hours and terminate at 2000 hours Alaska Standard or Alaska Daylight Time, as applicable, unless the Commission specifies otherwise.

(f) All commercial fishing for halibut in Area 2A and 2B shall cease at 1200 hours Pacific Standard Time on October 31.

(g) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

§ 301.8 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.7 of this part in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to §§ 301.17 (g) and (h) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retain any halibut during the closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retain any halibut fishing gear during the closed period after the operator notifies fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.9 Closed area.

All waters in the Bering Sea that are north of latitude 54°49'00" N. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W.; thence to a point at latitude 58°21'25" N., longitude 163°00'00" W.; thence to Stroganof Point (latitude 58°53'18" N., longitude 158°50'37" W.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.10 Catch limits.

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

<table>
<thead>
<tr>
<th>Regulatory area</th>
<th>Catch limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Pounds</td>
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<tr>
<td>2A</td>
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<tr>
<td>2B</td>
<td>10,500,000</td>
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<td>3A</td>
<td>20,700,000</td>
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<td>6,500,000</td>
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<td>2,020,000</td>
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<td>4B</td>
<td>2,300,000</td>
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<td>20,000</td>
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<tr>
<td>4E</td>
<td>120,000</td>
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</tbody>
</table>

(2) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken, no person shall fish for halibut in that area after that date for the remainder of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.11 Fishing period limits.

(a) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period.

(b) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(c) Length classes are shown in the following table:
(d) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 mt) of halibut per fishing period.
(e) Notwithstanding paragraph (b) of this section, all vessels fishing in subarea 4D-N shall be limited to a maximum catch of 1,000 pounds (0.45 mt) of halibut per fishing period.
(f) Notwithstanding paragraph (b) of this section, vessels fishing in Area 4E shall be limited to a maximum catch of 6,000 pounds (2.7 mt) of halibut per fishing period.
(g) Notwithstanding paragraph (f) of this section, a vessel will be permitted to make multiple fishing trips in Area 4E during the fishing period between September 19 and October 31, but each trip shall be limited to a maximum catch of 6,000 pounds (2.7 mt) of halibut and each trip shall be subject to the vessel clearance requirements in §301.14 of this part.
(h) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.
(i) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.
(j) No vessel that fishes for halibut in a regulatory area for which a fishing period limit is in effect shall fish in any other regulatory area during that fishing period.

§301.12 Size limits.

(a) No person shall take or possess any halibut that

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part; or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

(c) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

§301.13 Careful release of halibut.

All halibut in excess of a vessel's fishing period limit, when fishing period limits as determined or specified in §301.11 of this part are in effect, or halibut below the minimum size limit specified in §301.12 of this part shall be immediately released and returned to the sea with a minimum of injury by:

(a) Hook straightening outboard of the roller;

(b) Cutting the gill gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

§301.14 Vessel clearance in Area 4.

(a) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, 4D, 4E or subarea 4D-N must obtain a vessel clearance before such fishing in each such area and fishing period that applies, and before the unloading of any halibut caught in said areas and fishing periods, unless specifically exempted in paragraphs (b), (i), (j), or (k) of this section.

(b) The vessel clearances required under paragraph (a) of this section for Areas 4A, 4C, 4D 4E or subarea 4D-N must be obtained only at Dutch Harbor or Akutan, Alaska, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(c) The vessel clearances required under paragraph (a) of this section for Area 4B may only be obtained at Nazan Bay or Akutan, Alaska, from a fishery officer of the United States, a representative of the Commission or a designated fish processor.

(d) The vessel operator shall specify the specific fishing period and regulatory area in which fishing will take place.

(e) Vessel clearances required under paragraph (a) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0800 and 1800 hours, local time.

(f) No halibut shall be on board at the time of clearance required by paragraph (e) of this section.

(g) Vessel clearances required under paragraph (a) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the closings in that Area, between 0800 and 1800 hours, local time.

(h) Any person that fishes for halibut only in Area 4B and lands their total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (a) of this section.

(i) Any person that fishes for halibut only in Area 4C and lands their total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (a) of this section.

(j) Any person that fishes for halibut only in subarea 4D-N and lands their total annual halibut catch at a port within subarea 4D-N is exempt from the clearance requirements of paragraph (a) of this section.

§301.15 Logs.

(a) The operator of any vessel that is 5 net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Separate from other records maintained on board the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of 2 years by the owner or operator of the vessel;

(4) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following offloading halibut.

(c) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his crew members, or any other person for personal use, shall be recorded in the vessel's log within 24 hours of offloading.

(d) No person shall make a false entry in a log referred to in this section.

§301.16 Receipt and possession of halibut.

(a) No person shall receive halibut from a United States vessel that does not have the license required by §301.3 of this part on board the vessel.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from
which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State fish tickets or Federal catch reports, showing the date, locality, name of vessel, Halibut Commission license number (United States), and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) No person shall make a false entry on a State fish ticket or Federal catch report referred to in paragraph (b) of this section.

(d) A copy of the fish tickets or catch reports referred to in paragraph (b) of this section shall be:

(1) Retained by the person making them for a period of 2 years from the date the fish tickets or catch reports are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(e) No person shall possess any halibut that he or she knows to have been taken in contravention of this part.

(f) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (b) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (d) of this section.

(g) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.17 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(d) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number.

(e) The markings specified in paragraph (d) of this section shall be in characters at least 4 inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(f) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(1) Floating and visible on the surface of the water, and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(g) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.5(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) Notwithstanding paragraphs (g) and (h) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut in Areas 4B, 4C, 4E and subarea 4D-N as described in § 301.6 (g), (h), (j), and (k) of this part when the closed period prior to the scheduled fishing period is less than 72-hours in duration.

(j) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(k) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

§ 301.18 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining, landing, or selling a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by a fishery officer.

§ 301.19 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of fishery officers to assure the fulfillment of the provisions of this part.

§ 301.20 Fishing by United States treaty Indian tribes.

(a) Except as provided in this section, all regulations of the Commission in this part apply to halibut fishing in subarea 2A-1 by members of United States treaty Indian tribes located in the State of Washington.

(b) For purposes of this part, United States treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A-1 includes all waters off the coast of Washington that are north of latitude 46°53'18" N. and east of longitude 125°44'00" W., and all inland marine waters of Washington.

(d) Commercial fishing for halibut in subarea 2A-1 is permitted with hook and line gear from March 1 through October 31, or until 136,000 pounds (61.7 mt) is taken, whichever occurs first.

(e) Ceremonial and subsistence fishing for halibut in subarea 2A-1 is permitted with hook and line gear from January 1 to December 31, and is estimated to take 14,000 pounds (6.4 mt).

(f) No size or bag limits shall apply to the ceremonial and subsistence fishery except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per day per person.

(g) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(h) All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the provisions of § 301.12 of this part, Size limits.

(i) Any member of a United States treaty Indian tribe as defined in paragraph (b) of this section, who is engaged in commercial or ceremonial and subsistence fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974).

(j) The following table sets forth the fishing areas of each of the 12 United States treaty Indian tribes fishing pursuant to this section. Within subarea 2A-1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.
<table>
<thead>
<tr>
<th>Tribe</th>
<th>Boundaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Makah</td>
<td>North of 48°02'15&quot; N. latitude (Norwegian Memorial), west of 123°42'30&quot; W. longitude, and east of 125°44'00&quot; W. longitude.</td>
</tr>
<tr>
<td>Quileute</td>
<td>Between 48°07'36&quot; N. latitude (Sand Point) and 47°31'42&quot; N. latitude (Queets River), and east of 125°44'00&quot; W. longitude.</td>
</tr>
<tr>
<td>Hoh</td>
<td>Between 47°54'18&quot; N. latitude (Quillayute River) and 47°21'00&quot; N. latitude (Quinault River), and east of 125°44'00&quot; W. longitude.</td>
</tr>
<tr>
<td>Quinault</td>
<td>Between 47°40'06&quot; N. latitude (Destruction Island) and 46°53'18&quot; N. latitude (Point Chehalis), and east of 125°44'00&quot; W. longitude.</td>
</tr>
<tr>
<td>Lower Elwha</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Klallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Jamestown</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Klallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Port Gamble</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Klallam Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Klallam</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89-08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgment), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Lummi</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Swinomish</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1474, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Tulaip</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89-08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgment), to be places at which the Tulaip Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Suquamish</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
<tr>
<td>Skokomish</td>
<td>Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.</td>
</tr>
</tbody>
</table>

§301.21 Sport fishing for halibut.
(a) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.
(b) In all waters off Alaska:
1. The sport fishing season is from February 1 to December 31; and
2. The daily bag limit is two halibut of any size per day per person.
(c) In all waters off British Columbia:
1. The sport fishing season is from February 1 to December 31; and
2. The daily bag limit is two halibut of any size per day per person.
(d) In all waters off California, Oregon, and Washington:
1. To total allowable catch of halibut shall be limited to
2. 357,250 pounds (62.3 mt) north of Cape Falcon (latitude 45°46'00" N.), and
3. 87,750 pounds (39.8 mt) south of Cape Falcon.
(b) The sport fishing areas, area sub-quotas, fishing dates, and daily bag limits promulgated by NMFS are as follows except as modified under the inseason actions in paragraph (d)(3) of this section.
(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (latitude 48°35'44" N., longitude 124°43'00" W.) to the lighthouse on Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°43'42" W.), there is no sub-quota. The daily bag limit is one halibut of any size per day per person. The fishing season is May 13 through July 18, six days a week (closed Wednesdays).
(ii) In the area north of 48°02'15" N. latitude (Norwegian Memorial), west of 123°42'30" W. longitude, and east of 125°44'00" W. longitude.
quota is 7,137 pounds (3.2 mt). The daily bag limit is one halibut of any size per day per person. The fishing season is from May 20 through June 10, 2 days a week (Thursday and Friday). Immediately after the season closes, the Regional Director, in consultation with the affected states and Commission staff, will determine if the sub-quota for this area was taken. If the sub-quota was not taken and sufficient harvest remains for at least 1 day of fishing, the Regional Director will re-open the fishery on July 2 through September 30, 1 day a week (Friday), or until 7,137 pounds (3.2 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first.

(iv) In the area off Oregon between Cape Falcon and the California border (latitude 42°00'00" N.), the sub-quota is 85,469 pounds (38.8 mt). The daily bag limit is two halibut, one with a minimum overall size limit of 32 inches (81.3 centimeters) and the second with a minimum overall size limit of 50 inches (127.0 centimeters). The fishing seasons are:

(A) May 1 through July 11, 7 days a week, between Cape Falcon and Nestucca Bay (latitude 45°09'45" N.), or until 2,564 pounds (1.2 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first;

(B) May 1 through July 11, 5 days a week (Wednesday through Sunday), between Nestucca Bay and the California border, or until 65,811 pounds (29.9 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first;

(C) July 12 through August 3, 7 days a week, in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the California border, or until 2,564 pounds (1.2 mt) are estimated to have been taken (except that any poundage remaining unharvested after the earlier seasons will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(D) August 4 through September 30, 5 days a week (Wednesday through Sunday), from Cape Falcon to the California border, or until a total of 85,469 pounds (38.8 mt) for this area are estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(v) In the area off the California coast, there is no sub-quota. The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 centimeters). The fishing season in this area is May 1 through September 30, 7 days a week.

(3) Flexible inseason management provisions in Area 2A.

(i) The Regional Director, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after determining that such action:

(A) Is necessary to allow allocation objectives to be met; and

(B) Will not result in exceeding the catch limit established preseason for each area.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(iii) Notice procedures.

(A) Actions taken under paragraph (d)(3) of this section will be published in the Federal Register.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 800-662-9025 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF—FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

(iv) Effective dates.

(A) Any action issued under paragraph (d)(3)(iii) of this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Director determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after the filing of the action with the Federal Register.

(C) Any inseason action issued under paragraph (d)(3) of this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(v) Availability of data. The Regional Director will compile in aggregate form all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Fisheries Management Division, 7600 Sand Point Way NE, Seattle, Washington.

(4) The Commission shall determine and announce closing dates to the public for any area in which the sub-quotas under paragraph (d)(2) are estimated to have been taken.

(5) When the Commission has determined that a sub-quota under paragraph (d)(2) of this section is estimated to have been taken and announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled under paragraph (d)(2) or (d)(3) of this section, or announced by the Commission.

(e) Any minimum overall size limit in this section shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(f) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(g) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(h) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(i) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(j) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(k) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(l) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.
(m) The operator of a charter vessel shall be liable for any violations of this part committed by a passenger aboard said vessel.

§301.22 Previous regulations superseded. This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

BILLING CODE 3610-22-M
Minimum commercial size.

24 inches (61.0 cm) with head off
32 inches (81.3 cm) with head on

Figure 2 to Part 301
50 CFR Part 672
[Docket No. 921107-3068]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the "other species" category in the Western Regulatory Area, Statistical Area 61, in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the "other species" category total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), April 2, 1993, through 12 midnight, A.Lt., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of theMagnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the "other species" category TAC in the Western Regulatory Area was established by the notice of final specifications (58 FR 16787, March 31, 1993) as 3,045 metric tons (mt).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the "other species" category TAC in the Western Regulatory Area soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 2,770 mt; 275 mt remain to be taken as incidental catch in directed fisheries for other species in the Western Regulatory Area. The Regional Director has determined that the directed fishing allowance has been reached.

Consequently, NMFS is prohibiting directed fishing for the "other species" category in the Western Regulatory Area effective from 12 noon, A.l.t., April 2, 1993, through 12 midnight, A.Lt., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: March 31, 1993.

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

[FR Doc. 93-7915 Filed 3-31-93; 4:39 pm]
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 rule.

DEPARTMENT OF AGRICULTURE
Commodity Credit Corporation
7 CFR Part 1413
RIN 0560-AC75
1994 Wheat Program, Acreage Reduction

AGENCY: Commodity Credit Corporation, USA.
ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1994 crop of wheat. This action is required by the Agricultural Act of 1949 (the 1949 Act), as amended.

DATES: Comments must be received on or before May 3, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3740–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Grains Analysis Division, USDA, ASCS, room 3740–S, P.O.Box 2415, Washington, DC 20013–2415 or call 202 720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1521–1

This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as “major.” A Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impacts of implementing each option is available from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Wheat Production Stabilization—10.058.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 107B(e) of the 1949 Act to request comments with respect to the subject matter of this rule. The Preliminary Regulatory Impact Analysis referred to above determined that determining the 1994 wheat ARP will have no significant economic impact on small entities because the regulatory burden on the affected entities would remain the same regardless of the determinations made by this action. Thus, CCC certifies that this rule will have no significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. This rule does not involve the preemption of State law; it is not retroactive; and it does not involve any exhaustion of administrative remedy issues.

Paperwork Reduction Act

The amendment to 7 CFR part 1413 set forth in this final rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 107B of the 1949 Act, an Acreage Reduction Program (ARP) is required to be implemented for the 1994 wheat crop if it is determined that the total supply of wheat would otherwise be excessive. Land diversion payments also may be made to producers if needed to adjust the total national acreage of wheat to desirable goals. A land diversion program is not considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D and title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce wheat in excess of the permitted acreage for the farm plus any wheat acreage planted in accordance with the flexibility provisions provided by section 504 of the 1949 Act are ineligible for loans and purchases and all payments with respect to that crop on the farm.

If an ARP program for the 1994 crop is in effect, the program must be announced no later than June 1, 1993. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of wheat since the program was first announced. These adjustments must be made no later than July 31, 1993.

In addition, section 1302 of the Agricultural Reconciliation Act of 1990 provides that if June 30, 1992, the United States does not enter into an agricultural trade agreement in the Uruguay Round of multilateral trade negotiations under the General Agreement of Tariffs and Trade, the Secretary is authorized to waive any minimum ARP requirement for the 1993 through 1995 crops of wheat, as appropriate, to protect the interests of American agricultural producers and
ensure the international competitiveness of United States agriculture. Because the U.S. did not enter into an agreement by June 30, 1992, the Secretary is authorized to waive any minimum ARP requirement for 1994 wheat.

In accordance with section 107B of the 1949 Act, not less than 60 days before the program is announced for a crop of wheat, proposals for public comment on various program options for the crop of wheat are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option. In determining the 1994 wheat ARP, the Secretary will choose a specific ARP percentage from within a range established by the estimated ending stocks-to-use (S/U) ratio for the 1993/94 wheat marketing year. If it is estimated that the 1993/94 S/U in percentage terms will be—

(i) More than 40 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(ii) Equal to or less than 40 percent, the ARP may not be more than 0 to 15 percent.

The S/U for the 1993/94 marketing year at 28.7 percent is estimated to be well below 40 percent. Based on this estimate, the 1994 ARP may be not more than 15 percent.

In addition, section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1994 crop of wheat may not be less than 7 percent. This provision does not apply if the beginning stocks of soybeans for the 1991/92 marketing year are less than 325 million bushels or if the estimated S/U for the 1993 wheat crop is less than 34 percent.

The current estimate of soybean stocks on September 1, 1991, is 329 million bushels. The estimated S/U for the 1993/94 wheat crop is 28.7 percent. Thus, under current supply and use estimates for soybeans and wheat, the minimum 7-percent-ARP provision is not applicable. In any case, the Secretary could waive this minimum ARP under section 1302 of the Agricultural Reconciliation Act of 1990 as discussed above.

The 1994 ARP options considered are:

Option 1. 5-percent ARP.

Option 2. 10-percent ARP.

Option 3. 15-percent ARP.

The estimated impacts of the ARP options are shown in Table 1.

<table>
<thead>
<tr>
<th>Item</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARP (%)</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>Participation (%)</td>
<td>84</td>
<td>83</td>
<td>82</td>
</tr>
<tr>
<td>Planted Acrea (Million acres)</td>
<td>71.5</td>
<td>68.5</td>
<td>65.7</td>
</tr>
<tr>
<td>Production (Million bushels)</td>
<td>2,350</td>
<td>2,285</td>
<td>2,185</td>
</tr>
<tr>
<td>Domestic Use (Million bushels)</td>
<td>1,178</td>
<td>1,158</td>
<td>1,143</td>
</tr>
<tr>
<td>Exports (Million bushels)</td>
<td>1,225</td>
<td>1,210</td>
<td>1,200</td>
</tr>
<tr>
<td>Ending stocks (Million bushels)</td>
<td>700</td>
<td>650</td>
<td>595</td>
</tr>
<tr>
<td>Season Average Producer Price ($ / bushel)</td>
<td>2.80</td>
<td>2.88</td>
<td>2.98</td>
</tr>
<tr>
<td>Deficiency Payments &amp; Marketing Loan Benefits ($ million)</td>
<td>2,097</td>
<td>1,814</td>
<td>1,523</td>
</tr>
</tbody>
</table>

Accordingly, comments are requested as to whether there should be a 1994 acreage reduction percentage, and, if so, whether it should be 5 percent, 10 percent, 15 percent, or some other percentage within the range of 0 to 15 percent. The final determination of this percentage will be set forth at 7 CFR Part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308; 1308a; 1309; 1441-2; 1444-2; 1444f. 1445b-3a; 1461-1468; 15 U.S.C. 714b and 716c.

2. Section 1413.54(a)(1) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1)(i) 1991 wheat, 15 percent;

(ii) 1992 wheat, 5 percent;

(iii) 1993 wheat, 0 percent;

(iv) 1994 wheat, if announced, shall be within the range of 0 to 15 percent, as determined and announced by CCC.

* * * * *

Signed April 2, 1993 at Washington, DC.

Bruce R. Weber,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93-8135 Filed 4-2-93; 3:57 pm]

BILLING CODE 3410-05-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Supervisory Committee Audits and Verifications

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to amend its regulations governing credit union supervisory committee audits and verifications. The proposal would require independent annual audits (opinion audits) for federally insured credit unions with assets exceeding $50 million, and add a nonstatistical sampling option for independent, licensed, certified public accountants in the verification of members' accounts consistent with applicable generally accepted auditing standards (GAAS). The proposal would also require that the supervisory committee and/or its auditors provide NCUA the option to
The current regulation, §701.12, sets forth the supervisory committee's responsibility in meeting the audit and verification requirements of the Federal Credit Union Act. A supervisory committee audit is required at least once every calendar year covering the period since the last audit. The scope of the audit must be that which, as a minimum, tests the federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures, and classifications, and internal controls (§701.12(b)). A written report on the audit must be made to the board of directors and, if requested, NCUA (§701.12(c)). Working papers must be maintained and made available to NCUA (§701.12(c)). Independence requirements must be met (§701.12(d)); standards governing verifications—100 percent verification or statistical sampling—are set forth (§701.12(e)).

Section 741.2 makes these requirements applicable to federally insured state-chartered credit unions. As explained more fully below, the proposal adds a requirement for annual audits (opinion audits) by independent, licensed, certified public accountants for federally insured credit unions with assets greater than $50 million. The NCUA Board feels this is necessary due to the increasing complexity of credit union financial statements. In line with this philosophy, the agency recently began collecting quarterly call report data on larger credit unions. The requirement for an opinion audit will go hand in hand with this increased collection of financial data to facilitate the adequate supervision and examination of federal credit unions. The General Accounting Office had recommended such a requirement as a result of their 2-year study of NCUA and the credit union system ("Credit Unions: Assuring Future Soundness.").

In addition, the proposal expands the requirement of the supervisory committee and their compensated auditors to make original working papers available for NCUA review, to also allow photocopying by any authorized employee of NCUA. Credit unions are encouraged to include a clause in their engagement letters with outside auditors assuring the advanced agreement to allow regulators to review and to photocopy original working papers, as needed.

The proposal would amend applicable sections of the current regulation to more properly reflect accounting/auditing terms-of-art without changing the intent of the existing regulation. Certain terms, e.g., "audit," "review," "generally accepted auditing standards" (GAAS), "generally accepted accounting principles" (GAAP), have a specific meaning within the accounting profession and the usage of some of these terms in the current regulation is inconsistent and/or confusing in relation to the profession's usage. This will minimize differences in usage of terminology and should alleviate confusion.

And finally, the proposal adds a nonstatistical sampling option consistent with applicable generally accepted auditing standards for independent, licensed, certified public accountants in the verification of members' accounts. The current regulation permits two approaches to member account verification: 100 percent sampling or statistical sampling. The alternative option is consistent with our efforts to minimize differences between regulatory accounting/auditing practices and GAAP/GAAS.

The NCUA Board invites comments on all matters in this proposed amendment and particularly on the following specific issues and alternatives that the NCUA Board may consider in a final amendment to the regulation. Is the $50 million asset size threshold for requiring an "opinion audit" by an independent, licensed certified public accountant a reasonable threshold? Should there be an intermediate asset size above which a supervisory committee audit (limited to a §701.12 scope rather than an opinion audit) may be permitted if conducted by an independent licensed certified public accountant, say from $20 to under $50 million in assets? Should a third level of permissible "audit" be permitted; e.g., from $5 to under $20 million in assets, a supervisory committee audit conducted by a professional accountant; from $20 to under $50 million, a supervisory committee audit conducted by an independent, licensed, certified public accountant; from $50 million or more in assets, an "opinion audit" conducted by an independent, licensed, certified public accountant? Should a time period be specified in the amended regulation as to when requested original working papers must be provided for review and photocopying or should the standard be that which represents a "reasonable period of time?" The NCUA Board invites the accounting standards-setters and others within the accounting/auditing profession to comment on the proposed amendment's usage of accounting/auditing "terms-of-art"; are the terms properly set forth in the proposed amended regulation?

Analysis of Proposed Major Changes to Subsection 701.12(b) Audits

Requirement for an "Opinion" Audit

Currently, §701.12 has no requirement for an opinion audit by an independent, licensed, certified public accountant. An opinion audit by an independent, licensed, certified public accountant is only required when serious and persistent recordkeeping deficiencies exist. (See §701.13—Requirements for an Outside Audit, paragraph (a)(3)). This proposal would require all federally insured credit unions with an asset size of $50 million or greater to have an opinion audit performed by an independent, licensed, certified public accountant. The audit will be of the scope required by generally accepted auditing standards for the expression of an opinion on the financial statements. The requirement will affect approximately 3,680 federally insured credit unions (28.8 percent of federally insured credit unions).

Whenever possible, the NCUA Board urges smaller credit unions to use independent, licensed, certified public accountants for meeting the requirements of §701.12 as well.

Changes in Terminology

In subsection (b), the term "audit" is replaced by "supervisory committee audit." "Audit" is a term-of-art within the accounting profession generally having as its objective the expression of an opinion on the fairness with which an entity's financial statements present fairly, in all material respects, financial position, results of operations and cash flows in conformity with GAAP. Since the required minimum scope of a
supervisory committee audit is, in many cases, less than an audit as defined above, we felt the substitution of "supervisory committee audit" for "audit" in the regulation is a clarifying change.

The terminology "generally accepted auditing procedures and standards" is replaced by three alternatives that more clearly describe how the annual supervisory committee audit requirement may be satisfied. (Subparagraphs (b)(1)(i) (A) through (C):) A credit union's supervisory committee may meet their annual audit responsibilities by:

A. An audit performed by an independent, licensed, certified public accountant in accordance with GAAS.

B. An "agreed upon procedures engagement" performed by an independent, licensed, certified public accountant in accordance with applicable professional standards that in itself, or combined with procedures performed by the supervisory committee, encompasses the scope of a supervisory committee audit, or

C. Professional auditing procedures performed by the supervisory committee or its designated representative that encompasses the scope of a supervisory committee audit.

Option A. is an opinion audit and may exceed the minimum regulatory scope requirements for a supervisory committee audit. Option B. is less in scope than an opinion audit but sufficient in scope to meet regulatory supervisory committee audit requirements. Option C. is sufficient in scope to meet regulatory supervisory committee audit requirements but is performed by an individual(s) or firm(s) without professional certification by the AICPA and/or state boards of accountancy licensing. Credit unions with assets in excess of $50 million may only use option A. (Subparagraph (b)(1)(ii).)

An Analysis of Proposed Major Changes to Subsection 701.12(e)—Audits

Access to, and Photocopying of, Original Working Papers

The proposal expands the requirement that the supervisory committee and its compensated auditors to not only make original working papers available for NCUA review by providing for photocopying by any authorized employee of NCUA. The proposal provides that the failure to do so could result in NCUA finding the supervisory committee audit unacceptable in meeting the requirements of § 701.12. The need for this requirement has grown out of the recent increased resistance by independent accounts hired by supervisory committees to permit the photocopying of selected original working papers, as necessary, in support of the opinion audit. Without such working papers, it is often difficult for NCUA to establish that the supervisory committee audit scope has been met. It is NCUA's intent to use the photocopied original working papers for official purposes only in conjunction with our responsibilities to supervise and examine credit unions.

Analysis of Proposed Major Changes to Subsection 701.12(e) Verifications

Use of Nonstatistical Sampling

The proposal also adds a nonstatistical sampling option consistent with applicable generally accepted auditing standards for independent, licensed, certified public accountants in the verification of members' accounts.

In the preamble to the 1985 revision to this regulation, the NCUA Board indicated its intent to permit "* * * sampling plan(s) that would be acceptable in the verification process to detect fraud or manipulation of members' accounts." It seems fairly clear that the NCUA Board's intent, with regard to establishing sampling policy, was to hold licensed, independent, certified public accountants to their governing professional standards. Current standards provide guidance for the auditor's design and implementation of audit sampling plans. The standards endorse both a statistical approach and a nonstatistical approach to sampling by concluding that either approach can provide sufficient evidential matter, as required by the third standard of fieldwork " * * *. The third standard of fieldwork requires that sufficient competent evidential matter be gathered by the auditor as a basis for formulating an opinion on the final statements. Evidence may be defined as any information that has an impact on determining whether the financial statements are presented in accordance with generally accepted accounting principles (AICPA Professional Standards, AU Section 350, "Auditing Sampling.").

The proposed change would permit an independent, licensed, certified public accountant's use of a nonstatistical sample in the verification of members' accounts if all of the following criteria are met:

a. The sample is made in compliance with applicable professional standards.

b. The sample continues to be sufficient in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded (§ 701.12(b)).

c. The independent accountant attests to the sample's sufficiency in verifying members' accounts as to existence, proper cut off, valuation, ownership, disclosures and classification, and internal controls (§ 701.12(b)).

It is not the NCUA Board's intention to permit other than independent, licensed, certified public accountants to use nonstatistical sampling in the verification of members' accounts nor do we wish to promote nonstatistical sampling methods over 100 percent verifications and statistical sampling methods.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The NCUA Board has determined and certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions. As to small credit unions, the proposed amendment clarifies without imposing additional burden.

Accordingly, the NCUA Board determines and certifies that this proposed amendment does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The proposed amendment does not change the paperwork requirements.

Executive Order 12812

Executive Order 12812 requires NCUA to consider the effect of its actions on state interests. The proposed amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of rights and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 701

Civil rights, Credit, Credit unions, Fair housing, Insurance, Mortgages, Reporting and recordkeeping requirements.
By the National Credit Union Administration Board on March 25, 1993.

Bucky Baker,
Secretary of the Board.

Accordingly, it is proposed that 12 CFR part 701 be amended as set forth below:

PART 701—[AMENDED]

1. The authority citation for part 701 continues to read as follows:


2. Section 701.12 is amended by revising paragraphs (b), (c) and (e).

§ 701.12 Supervisory committee audits and verifications.

(b) (1) A "supervisory committee audit" of each Federal credit union shall occur at least once every calendar year and shall cover the period elapsed since the last audit. The supervisory committee audit shall be made using applicable professional auditing procedures, which as a minimum, should test the Federal credit union's assets, liabilities, equity, income, and expenses for existence, proper cut off, valuations, ownership, disclosures and classification, and internal controls. The annual supervisory committee audit requirement may be satisfied by one of the following:

(i) An audit performed by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards; or

(ii) A controlled random statistical sampling method that accurately tests sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded. Independent, licensed, certified public accountants will be responsible for documenting their sampling procedures and attesting to the sampling method's adequacy in testing the accounts to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded.

The supervisory committee and/or its independent auditors shall be responsible for the preparation and the maintenance of original working papers used to support each supervisory committee audit. Such original working papers shall be made available by the supervisory committee annual audit performed by an independent, licensed, certified public accountant in accordance with generally accepted auditing standards.

(c) The supervisory committee audit report is promptly prepared and reported to the board of directors.

(d) The supervisory committee audit is timely, that applicable generally accepted auditing standards are followed, that an adequate audit of the credit union records is made, and that the written audit report is promptly prepared and reported to the board of directors.

(e) (1) The verification of members' accounts shall be made using any of the following methods:

(i) A controlled verification of 100 percent of members' share and loan accounts;

(ii) A controlled random statistical sampling method that accurately tests sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded. That sampling procedure must provide each member account an equal chance of being selected.

(iii) Independent, certified public accountants are provided the additional option of sampling members' accounts using nonstatistical sampling methods consistent with applicable generally accepted auditing standards, provided the sampling method accurately tests sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated and that members' accounts are properly safeguarded.

(2) Records of those accounts verified will be maintained and will be retained until the next verification of members' accounts is completed.

[FR Doc. 93-7703 Filed 4-5-93; 8:45 am]
BILLING CODE 7535-01-M

DEPARTMENT OF THE INTERIOR
Office of Surface Mining Reclamation and Enforcement
30 CFR Part 950

Wyoming Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: OSM is announcing the receipt of two proposed amendments to the Wyoming permanent regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendments are legislative changes to the Wyoming Environmental Quality Act enacted by the Fifty-second Legislature of the State. OSM is announcing these amendments to provide interested persons to be notified of mining permit applications both within the permit area and lands immediately adjacent to the permit area (within 1/2 mile).

This document sets forth the times and locations that the Wyoming program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.t. May 6, 1993. If requested, a public hearing on the proposed amendment will be held on May 3, 1993. Requests to present oral
testimony at the hearing must be received by 4 p.m., m.d.t. on April 21, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below. Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM’s Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East B Street, room 2128, Casper, WY 82001-1918, Telephone: (307) 261-5776.

Douglas Hemmer, Director, Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, Telephone: (307) 777-7758.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Director, Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1986, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the Wyoming program can be found in the November 26, 1980 Federal Register (45 FR 78684). Subsequent actions concerning Wyoming’s program and program amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Proposed Amendment

By separate letters dated March 19, 1993 (Administrative Record Nos. WY—23-01 and WY—23-02), Wyoming submitted statutory changes to its approved Coal Program pursuant to legislation passed by Wyoming’s Fifty-second Legislature (1993 General Session) as proposed amendments to its program pursuant to SMCRA. Enrolled Act No. 31 (Amending W.S. 35—71—406[b]) is a State-initiated action that requires all surface owners within and adjacent to the permit area (within 1/4 mile) to be notified of the mine permit application. Notification is also required to be given to an operator or lessee of record of any oil or gas well or lease within the permit area.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Wyoming program.

Written Comments

Written comments should be specific, pertain only to the proposed rulemaking, and include explanations in support of the commenter’s recommendations. Comments received after the time indicated under “DATES” or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under “FOR FURTHER INFORMATION CONTACT” by 4 p.m., m.d.t., April 21, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Accordingly, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(b)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1262(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).
Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submitted which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.


Raymond L. Lowrie,
Assistant Director, Western Support Center.

Federal Register / Vol. 58, No. 64 / Tuesday, April 6, 1993 / Proposed Rules 17813
include in their tariff only the information required under this section of the Act. We also propose to modify the rate information required by our rules. Currently carriers are required to prepare and file new schedules each time they wish to implement minor rate revisions. We propose to allow nondominant carriers to state in their tariffs either a maximum rate or a range of rates. This proposal would eliminate the need for nondominant carriers to file new schedules whenever rate changes are either under the maximum rate or within specified ranges—whichver is appropriate.

7. We seek comment on the lawfulness of these proposals, and, in particular, on whether they comply with section 203(a) of the Act. We also encourage parties to recommend additional or alternative means by which we may lawfully reduce the tariff filing burdens for nondominant carriers.

8. Next, we proposed to amend the tariff form requirements for domestic nondominant carriers. We tentatively conclude that our tariff form requirements for nondominant carriers are unnecessary. We therefore propose to modify substantially or eliminate the tariff form requirements for these carriers. First, we propose to establish new rules for nondominant carriers and to modify the existing form requirements to state that these rules apply only to dominant common carriers. We propose to adopt the following form requirements for nondominant carrier tariffs:

1. In order to facilitate the processing, storage, and availability of the scores of tariffs we expect to receive from nondominant carriers, we propose to require nondominant carriers to file tariffs and updates on a three and one half inch floppy diskettes that contain the complete tariff. We proposed to require that updates be integrated into the complete tariff and that the entire tariff, as modified, be refiled on diskettes.

2. We propose to give carriers flexibility in indicating material that is new or changed. Carriers would be required to indicate in the tariff, in whatever way they prefer, that new or changed material is present.

3. We propose that, in lieu of formal transmittal letter requirements, carriers will be permitted to file a cover letter in a form of their choice. We propose to require that cover letters are 8½ by 11 inches in size, that they identify the carrier, and that they briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter.

4. We propose to allow carriers to state, in any form, the tariff charges and the classifications, practices, and regulations affecting such charges required under section 203(a) of the Act.

9. We tentatively conclude that our proposals to modify those requirements for nondominant carriers are consistent with the Act. We seek comment regarding the costs and benefits of applying the current tariff form requirements to nondominant carriers. Furthermore, we solicit comments on the proposals set forth above and on any additional or alternative means of reducing the administrative burden on nondominant carriers.

10. Finally, we propose new rules governing how a nondominant carrier tariff filing is made. We propose to adopt the following tariff filing rules:

1. Nondominant carriers must send a paper copy of the cover letter, fee form and fee to the Mellon Bank.

2. Carriers must file with the Secretary of the Commission a copy of the cover letter and tariff filing on diskette. This copy would be for the Commission’s official records and would not be generally available to the public.

3. Carriers must also send a paper copy of the cover letter and one diskette to the Public Reference Room. This copy would be available for public reference.

4. Carriers updating tariffs already on file would file a paper copy of the cover letter and diskette containing the complete tariff, with the new or changed material inserted.

Ex Parte Rules

11. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally Section 1.1206(a) of the Commission’s Rules. 47 CFR 1.1206(a).

Initial Regulatory Flexibility Act Analysis

Reason for Action

12. On November 13, 1992, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission’s long-standing “forbearance” policy under which nondominant carriers—carriers lacking market power—were permitted to refrain from filing tariffs. As a result of the court’s decision, nondominant carriers are now obligated to file tariffs with the Commission. This rulemaking is initiated in order to seek comment on a proposal to reduce the tariff filing burdens on carriers affected by the court’s decision.

Objectives

13. The Commission seeks to eliminate unnecessary and costly regulations placed upon nondominant carriers by streamlining our tariff filing requirements for such carriers to the maximum extent possible under the Communications Act.

Legal Basis

14. This proposed action is taken pursuant to Sections 1, 4(i), 4(j), 201–205, and 403 of the Communications Act as amended; 47 U.S.C. 154(f), 154(j), 201–205, 403.

Reporting, Recordkeeping and Other Compliance Requirements

15. The proposed rules are designed to ease the reporting, recordkeeping and compliance requirements for nondominant common carriers. Specifically, the Notice proposes to allow such carriers to file only the information required under section 203 of the Act. The proposed rules would also eliminate the need for carriers to file tariff amendments for rate changes within a specified range. Finally, the proposed rules would require nondominant carriers to file tariffs on three and one half inch floppy diskettes, and eliminate many of technical tariff form requirements that apply to dominant carrier tariffs.

Description, Potential Impact, and Number of Small Entities Involved

16. Any rule changes in this proceeding would affect all common carriers classified as nondominant by the Commission by changing the tariff filing requirements for such carriers. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

17. The Notice asks parties to recommend any alternative means of reducing the tariff filing requirements for nondominant carriers.

Ordering Clauses

18. Accordingly, It is Ordered That Notice is hereby Given of the proposed regulatory changes described above, and that Comment is Sought on these proposals.

19. It is further Ordered That pursuant to applicable procedures set forth in
§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments Shall Be Filed with the Secretary, Federal Communications Commission, Washington, DC 20554 on or before March 29, 1993, and reply comments Shall Be Filed with the Secretary, April 19, 1993.

To file formally in this proceeding, parties must file an original and four copies of all comments, reply comments, and supporting comments. Parties wishing each Commissioner to receive a personal copy of their comments must file an original plus nine copies. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, room 544, 1919 M Street NW, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, the International Transcription Services, Inc., suite 140, 2100 M Street NW, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, room 239, 1919 M Street, NW, Washington, DC 20554.

Paperwork reduction: The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's Records Management and Budget should also be purchased from the Commission's Paperwork Reduction Project, Washington, DC 20554. Persons wishing to comment on this collection of information should direct their comments to Jonas Niehardt, Office of Records Management, Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20554. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 832-7513.

Title: Tariff Filing Requirements for Nondominant Common Carriers

OMB Control Number: None.

Action: Proposed new collection.

Respondents: Business or other for profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 5000 responses; 40.8 hours per response; 202,500 hours total.

Needs and Uses: The Notice of Proposed Rulemaking solicits public comment on tariff filing requirements for domestic nondominant common carriers. The information will be used by the Commission staff to determine whether the services offered are just and reasonable as required by the Communications Act. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner. If the tariffs were not filed, the carriers could be found in violation of section 203 of the Communications Act.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Proposed Amendatory Text

Part 61 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 61—TARIFTS

1. The authority citation for part 61 continues to read as follows:


2. A new § 61.20 is added and an undesignated center heading is added immediately preceding § 61.20 to read as follows:

General Rules for Domestic Nondominant Carriers

§ 61.20 Method of filing publications. (a) Publications sent for filing must be addressed to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which the publication is received by the Secretary of the Commission (or the Mail Room where submitted by mail) is considered the official filing date.

(b) In addition, for all tariff publications requiring fees as set forth in part 1, subpart G, of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 155, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one diskette containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff Review Branch. The letter should be clearly labeled as the "Public Reference Copy." The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a) of this section.

3. A new § 61.21 is added to read as follows:

§ 61.21 Cover letters. (a) Except as specified in 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8 1/2 by 11 inches in size. All cover letters should briefly explain the nature of the filing and indicate the date and method of filing of the original of the cover letter as required by § 61.20(b).

(b) A separate cover letter may accompany each publication, or an issuing carrier may file as many publications as desired with one cover letter.

Note: If a receipt for accompanying publication is desired, the cover letter must be sent in duplicate. One copy showing the date of receipt by the Commission will then be returned to the sender.

4. A new § 61.22 is added and an undesignated center heading is added immediately preceding § 61.22 to read as follows:

Specific Rules for Domestic Nondominant Carriers

§ 61.22 Composition of tariffs. (a) The tariff must be submitted on a 3½ inch diskette, formatted in an IBM compatible form using MS DOS 5.0 and Word Perfect 5.1 software. The diskette must be clearly labelled with the carrier's name, Tariff Number, and the date of submission. The cover letter must be submitted on 8 1/2 by 11 inch paper, and must be plainly printed in black ink.

(b) The tariff must contain the carrier's name, and the information required by section 203(c) of the Act. Rates may be expressed in a manner of ranges or maximums.

(c) Changes to a tariff must be made by refiling the entire tariff on a new diskette, with the changed material included. The carrier must indicate in the tariff what changes have been made.

5. A new § 61.23 is added to read as follows:
§ 61.23 Notice requirements.

(a) Every proposed tariff filing must bear an effective date and, except as otherwise provided by regulation, special permission, or Commission order, must be made on at least the number of days notice specified in this section.

(b) Notice is accomplished by filing the proposed tariff changes with the Commission. Any period of notice specified in this section begins on and includes the date the tariff is received by the Commission, but does not include the effective date. In computing the notice period required, all days including Sundays and holidays must be counted.

(c) Tariff filings of domestic nondominant carriers must be made on at least 1 day notice.

Federal Communications Commission.
Donna R. Searcy, Secretary.

[FR Doc. 93–7620 Filed 4–5–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. MM 93–72, RM–8154]
Radio Broadcasting Services; Ridgecrest and Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Roy William Mayhugh, licensee of Station KLOA, Ridgecrest, California, seeking the substitution of Channel 290B3 at Paradise Valley, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 21, 1993, and reply comments on or before June 7, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petition, as follows: Roy William Mayhugh, KLOA Radio, 731 N. Balsam St., Ridgecrest, CA 93555.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Notice of Proposed Rule Making, MM Docket No. 93–72, adopted March 8, 1993, and released March 31, 1993. 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, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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

[FR Doc. 93–7934 Filed 4–5–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–66, RM–8130]
Radio Broadcasting Services; Paradise Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Scottsdale Talking Machine & Wireless Company, Inc., licensee of Station KXLL (FM), Channel 290A, Paradise Valley, Arizona, seeking the substitution of FM Channel 290C3 for Channel 290A and modification of its authorization accordingly. Coordinates for this proposal are 33–52–30 and 111–57–12. Mexican concurrence will be requested for this allotment.

Petitioner’s modification proposal complies with the provisions of § 1.420(g) of the Commission’s Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 290C3 at Paradise Valley, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 20, 1993, and reply comments on or before June 4, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner’s counsel, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, NW., suite 500, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Notice of Proposed Rule Making, MM Docket No. 93–66, adopted March 8, 1993, and released March 30, 1993. 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, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–69, adopted March 8, 1993, and released March 31, 1993. 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, Inc., (202) 857–3800, 2100 M Street, NW., suit 140, Washington, DC 20037.

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 Services; San Carlos and Oracle, AZ
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Desert West Air Ranchers Corporation, permittee of Station KOYF (FM), Channel 279A, San Carlos, Arizona, seeking the substitution of Channel 279C2 for Channel 279A and modification of its authorization accordingly. In order to accommodate the request, petitioner seeks the substitution of Channel 279A for Channel 276A at Oracle, Arizona, and modification of the license of Station KLQB (FM), Channel 276A, accordingly. An Order to Show Cause is issued to Golden State Broadcasting Corporation, licensee of Station KLQB (FM).

For further information contact: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Notice of Proposed Rule Making, MM Docket No. 93–69, adopted March 8, 1993, and released March 31, 1993. 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, Inc., (202) 857–3800, 2100 M Street, NW., suit 140, Washington, DC 20037.

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 Services; Wellton, AZ
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Farmworkers Communications, Inc., requesting the allotment of FM Channel 285C2 to Wellton, Arizona, as that community’s first local aural transmission service. For further information contact: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Notice of Proposed Rule Making, MM Docket No. 93–69, adopted March 8, 1993, and released March 31, 1993. 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, Inc., (202) 857–3800, 2100 M Street, NW., suit 140, Washington, DC 20037.

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.
AGENCY: Federal Communications Commission.
ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Farmworkers Communications, Inc., requesting the allotment of FM Channel 285C2 to Wellton, Arizona, as that community’s first local aural transmission service. Coor2dinate for this proposal are 32–40–18 and 114–08–18. Mexican concurrence will be requested for this allotment.
SUMMARY: This document requests comments on a petition for rule making filed on behalf of Circle S Broadcasting Co., permittee of Station KFMA (FM), Channel 229A, Wickenburg, Arizona, seeking the substitution of Channel 231C for Channel 229A and the modification of its authorization accordingly to specify operation on the higher powered channel. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 231C at Wickenburg or require the petitioner to demonstrate the availability of an additional equivalent class channel. Additionally, since Wickenburg is located within 320 kilometers of the Mexican border, international coordination of this proposal with Mexico is required, pursuant to the terms of the United States-Mexican FM Broadcasting Agreement of 1972, 24 UST 1815, TIAS NO. 7897. Coordinates for this proposal are 33-51-31 and 112-53-04.

DATES: Comments must be filed on or before May 21, 1993, and reply comments on or before June 7, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Aaron P. Shainis and Lee J. Pehzman, Esqs., Baraff, Koerner, Olender & Hochberg, P.C., 5335 Wisconsin Avenue, NW., suite 300, Washington, DC 20015.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-68, as adopted March 8, 1993, and released March 30, 1993. 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, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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.

47 CFR Part 73 [MM Docket No. 93-67, RM-8114]
Radio Broadcasting Services; Globe, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Linda C. Potyka, permittee of Station KRKS (FM), Channel 247A, Globe, Arizona, seeking the substitution of Channel 247C3 for Channel 247A and modification of her permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 33-17-37 and 110-50-09. Mexican concurrence will be requested for this allotment.

Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 247C3 at Globe, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before May 20, 1993, and reply comments on or before June 4, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Avenue, suite 500, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-67, adopted March 8, 1993, and released March 30, 1993. 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, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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.
Commission's Rules, we will not accept competing expressions of interest in use of Channel 279C3 at Wallis 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 May 20, 1993, and reply comments on or before June 4, 1993.

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: Frank R. Jazz, Esq., Fletcher, Heald & Hildreth, 1300 North 17th Street, 11th Floor, Rosslyn, Virginia 22209 (Counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–66, adopted March 8, 1993, and released March 30, 1993. 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, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

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,

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

[FR Doc. 93–7888 Filed 4–5–93; 8:45 am]

B. Need for Exclusivity

1. In this Notice, we propose to amend Part 90 of the Commission's rules to grant channel exclusivity to qualified 900 MHz PCP systems. Under our proposal, PCP systems consisting of six or more transmitters would be entitled to local exclusivity in most areas, and larger systems could obtain regional or nationwide exclusivity. The proposal would be implemented on 35 of the 40 private paging channels at 900 MHz, while five channels would continue to be assigned on a shared basis. Exclusivity would be conditioned on completion of construction within eight months of licensing, with "slow growth" extensions allowed under some circumstances. Existing systems meeting the new criteria would obtain immediate exclusivity, and all other existing systems would be grandfathered. We request comments on the merits of exclusivity for PCP systems generally, and on the specifics of this proposal.

2. Under our current rules, the 40 private paging channels at 900 MHz are assigned on a shared basis, with applications subject to frequency coordination to maximize efficient channel use. Since these rules were adopted in 1982, however, the demand for paging services has increased dramatically, particularly for services that can be offered on a regional or national basis. To meet this demand, paging companies have occupied most of the available spectrum on common carrier paging channels and on PCP channels below 900 MHz, and demand for 900 MHz PCP channels, while historically limited, is now increasing as an alternative spectrum grows scarce.

3. As demand for paging spectrum grows, the sharing of paging frequencies, although technically feasible, threatens to discourage optimally efficient use. Paging operators on a common frequency must invest in costly monitoring or interconnection equipment. Air time on shared frequencies must be allotted among multiple users, causing delays in message transmission. We are concerned that licensees may be inhibited from investing in state-of-the-art systems because of the possibility that other licensees could be assigned to the same frequency.

4. In light of these developments, we propose to establish some form of channel exclusivity for 900 MHz PCP systems. We believe that exclusivity should be implemented sooner rather than later, notwithstanding the relative lack of crowding on 900 MHz PCP channels at present. So long as the spectrum is not heavily used, we have the flexibility to prevent congestion before it occurs. Conversely, if we choose to maintain the status quo until crowding occurs, we risk losing flexibility and being unable to implement any new approach at all.

5. The proposal set forth in the Notice is based on a proposal submitted by the National Association of Business and Educational Radio, Inc. (NABER), which was developed based on discussions within the private paging industry. We generally concur with NABER's suggested approach, but believe that some aspects of its proposal should be modified. We request comments on the
technical basis and practical effect of the NABER proposal and our proposed modifications. We also invite commenters to discuss further modifications or alternatives that would promote the general objectives of this proceeding.

C. Local Systems

6. In all but the three largest urban markets, we propose to grant local exclusivity to any PCP system comprised of at least six contiguous transmitters (to be “contiguous,” each transmitter must be within 25 miles of at least one other transmitter in the system). This minimum should ensure adequate coverage in most markets, while the capital investment required to build such a system is likely to discourage speculative applications. To obtain exclusivity in the three largest markets, however, we tentatively conclude that more than six transmitters should be required, and request comment on the appropriate number.

7. For those systems that qualify for local exclusivity, we propose to impose minimum mileage separations on co-channel licensees. Required separation distances would be based on the antenna height and effective power of the protected system’s transmitters. We have recently adopted this approach for 900 MHz common carrier paging frequencies (which are already assigned on an exclusive basis), and believe the same approach can be used for PCP systems without the licensing process becoming more burdensome.

D. Regional Systems

8. Under our proposal, regional systems comprised of 70 or more transmitters situated in no more than 12 adjacent states would receive the same co-channel protection as local systems, except that protection would be extended to non-contiguous transmitters in the system. However, to prevent applicants from attempting to “block out” major markets through strategic transmitter placement, regional system operators proposing to serve any of the top 30 markets would be required to meet the criteria for local exclusivity in those markets.

E. Nationwide Systems

9. We further propose to enable large nationwide PCP systems to obtain nationwide exclusivity. To qualify, such systems would be required to (1) have a minimum of 300 transmitters, (2) provide service to fifty or more markets, including at least twenty-five of the top fifty markets, and (3) serve at least two markets in each of seven regions patterned after the seven RBOC regions.

We believe this standard will distinguish truly national paging systems from those that are essentially regional in character.

F. Channel Allocation

10. The proposed rules would apply to 35 of the 40 900 MHz PCP channels. The remaining five channels will continue to be assigned on a non-exclusive basis. We anticipate that this reserve will be particularly useful to small non-commercial systems that do not need or desire an exclusive channel assignment. We do not consider it necessary to reserve these channels exclusively for non-commercial use, however, nor do we intend to prohibit non-commercial licensees from seeking exclusivity on any channel covered by the proposed rules. Therefore, we propose that commercial and non-commercial operators be equally eligible to apply for any PCP channel.

G. Construction and Technical Requirements

11. Under our proposal, exclusivity would be granted conditionally upon frequency assignment, and would run for eight months from initial licensing. Applicants seeking to build larger systems (30 or more transmitters) could apply for up to three years to construct based on a showing of reasonable need for the extension, a detailed construction timetable, and evidence of financial ability to construct the system. If the system were not constructed and operating at the end of the relevant construction period, exclusivity would be forfeited and the channel made available to other applicants.

12. To discourage speculative applications, the Notice proposes minimum technical standards for each transmitter to be counted towards the number required for channel exclusivity. Specifically, each transmitter must have 100 watts minimum output power and simulcast capability, and all transmitters must function together as part of a single operating system.

13. Some commenters on NABER's petition contend that the construction and technical requirements alone will not prevent speculation, and call for the imposition of loading standards as an additional requirement for exclusivity. We have elected not to incorporate a loading standard into our proposal. Our experience has been that loading standards are burdensome to administer and difficult to calibrate to the realities of the paging marketplace. We also believe that other aspects of this proposal will sufficiently discourage speculation.

14. To prevent applicants from applying for multiple frequencies to block entry by potential competitors, we propose that applicants be limited to requesting one frequency at a time at any location. An application would not be entitled to request a second frequency in a given area unless and until it completed construction and commenced operation of a qualified system in that area on the initial frequency.

H. Treatment of Existing Systems

15. The Notice proposes to extend exclusive channel rights to all systems that qualify for such protection at the time the rules go into effect. Although this would result in immediate exclusivity for some existing PCP systems, we believe they will still be sufficient spectrum for new applicants. We do not regard this as a preference in favor of existing systems, but as a fair and equitable measure that reflects the investment that these licensees have already made when others did not choose to.

16. We also propose to grandfather all existing systems that do not qualify for exclusivity, so that small existing systems may continue operating without being forced to change frequencies or location. In our view, some form of grandfathering is essential to protect the interests of existing licensees, although grandfathering may limit the opportunities for new licensees to obtain exclusive spectrum. We request comment on what impact grandfathering would have on existing systems and on the ability of new systems to obtain exclusive frequencies.

1. Coordination

17. The Notice seeks comment on whether frequency coordination should continue to be required if the proposed rules are adopted. While we have relied on coordination in assigning shared frequencies, assigning exclusive frequencies may require a revised approach. Nevertheless, coordination may continue to be important to making the licensing process efficient and equitable. We therefore propose to continue to use coordination procedures, but would allow PCP applicants to select from any of the three recognized frequency coordinators (NABER, ITA, or APCO) to obtain coordination.

Initial Regulatory Flexibility Analysis

Reason for Action

The Commission proposes to amend Part 90 of its rules to provide channel exclusivity to qualified private carrier
peaging systems on certain channels in the 929–930 MHz band. This change will promote the efficient use of peaging channels by encouraging investment in new peaging technology and the development of more efficient peaging systems providing local, regional, and nationwide service.

**Legal Basis**

The proposed action is authorized under Sections 4(g), 303(q), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(f), 303(q), 303(r), and 332(a) (1988).

Reporting, Recordkeeping and Other Compliance Requirements

None.

**Federal Rules Which Overlap, Duplicate or Conflict With These Rules**

None.

**Description, Potential Impact, and Number of Small Entities Involved**

The proposal would not affect the status of existing peaging systems, but would change the requirements for obtaining authorization to expand existing systems or construct new systems. Both large and small private carrier peaging applicants would be required to submit additional information in the licensing process to demonstrate compliance with geographic separation standards. Approximately two or three hundred existing licensees and an unknown number of potential applicants could be affected by the proposal.

**Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives**

The Notice discusses a variety of alternatives, none of which would have significantly greater or lesser impact than the proposal presented.

**IRFA Comments**

We request written public comment on the foregoing Initial Regulatory Flexibility Analysis. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the comment deadlines set forth in this notice.

**List of Subjects in 47 CFR Part 90**

Business and industry, Channel exclusivity, Private carrier peaging, Private land mobile radio services.

Federal Communications Commission.

Donna R. Searcy, Secretary.

[FR Doc. 93–7988 Filed 4–5–93; 8:45 am]

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**DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration (NOAA)

**50 CFR Parts 672 and 675**

[Docket No. 930357–3057]

RIN 0648–AF05

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to implement additional requirements for the careful release of Pacific halibut taken incidental to the hook-and-line gear fisheries for groundfish in the Bering Sea and Aleutian Islands Area (BSAI) and Gulf of Alaska (GOA). This action is necessary to reduce halibut bycatch mortality rates, increase the amount of groundfish harvested by hook-and-line gear fisheries under halibut bycatch mortality restrictions, and potentially decrease overall halibut bycatch mortality in the groundfish fisheries. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

**DATES:** Comments must be received at the following address no later than 4:30 p.m., Alaska local time (A.l.t.), April 20, 1993.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802, Attention: Leri Gravel. Copies of the proposed action may be obtained from the same address (telephone 907–586–7226).

**FOR FURTHER INFORMATION CONTACT:** Ellen R. Varosi, Fisheries Management Biologist, NMFS, (907) 586–7228.

**SUPPLEMENTAL INFORMATION:**

**Background**

The domestic groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary of Commerce (Secretary) in accordance with the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. These FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). These FMPs are implemented by regulations governing the U.S. fisheries at 50 CFR parts 672 and 675. Additional regulations applicable to the U.S. fisheries are codified at 50 CFR part 620.

Fisheries for groundfish in the BSAI and GOA are prosecuted with a variety of gear types. Each gear type causes different problems for bycatch of prohibited species, including Pacific halibut. Prohibited species catch (PSC) limits are established that may be apportioned to gear groups and fisheries as bycatch allowances. Gear groups and fisheries that reach seasonal bycatch allowances are closed through specific time periods. Fisheries that reach annual bycatch allowances are closed for the remainder of the year, often with large quantities of groundfish total allowable catch (TAC) amounts remaining. Management measures have been implemented to limit prohibited species bycatch and reduce bycatch rates in a manner that maintains an opportunity for fishermen to harvest available TAC amounts of groundfish. In the case of Pacific halibut, PSC limits established for the groundfish fisheries are in terms of mortality rather than actual amounts of halibut caught.

Mortality limits encourage the development of measures that reduce bycatch rates and increase survival of discarded bycatch. Actions taken by the groundfish fleet to reduce mortality rates can result in more groundfish harvest before specified mortality limits are reached. Regulations at § 672.21(a) establish a 900-metric ton (mt) halibut bycatch mortality limit for non-trawl gear in the BSAI. During 1993, 825 mt of this limit is apportioned to the hook-and-line fishery for Pacific cod and the remaining 75 mt is apportioned to all other non-trawl gear fisheries (58 FR 6703, February 17, 1993). The 1993 halibut bycatch mortality limit specified for the GOA hook-and-line groundfish fisheries under regulations at § 672.20(f) is 750 metric tons (58 FR 16787, March 31, 1993).

During its September 22–27, 1992, meeting, the Council received a proposal from the International Pacific Halibut Commission (IPHC) recommending a requirement to cut gangions from hook-and-line gear when Pacific halibut were hooked incidentally. The intent of this proposal was to reduce the halibut bycatch mortality rates experienced in the GOA and BSAI hook-and-line fisheries and increase the amounts of groundfish that could be harvested by fishermen using hook-and-line gear under bycatch
mortality limits. At the September meeting, the Council requested that an analysis be prepared on management measures requiring the release of halibut by cutting the gangion of each halibut caught incidentally. During the development of the analysis, members of the fishing industry responded favorably to the proposal and suggested additional methods for the careful release of halibut. These methods accomplish the goal of reducing halibut mortality by removing the hook from Pacific halibut caught on hook-and-line gear and are less costly to industry and less harmful to halibut. NMFS and IPHC staff included these methods as alternatives in the draft analysis on careful release measures.

At its December 7–13, 1992, meeting, the Council reviewed the draft EA/RIR/IRFA that contained different alternatives for mandatory careful release procedures to reduce halibut bycatch mortality rates. The Council also considered: (1) New information on estimates of halibut bycatch mortality rates based on 1991 observer data; (2) testimony and input from comments on careful release procedures from the Council's Advisory Panel, fishing industry representatives, and the general public; (3) the applicability of mandatory careful release procedures to unobserved vessels; and, (4) the anticipated effect of mandatory careful release measures on assumed mortality rates.

Given this information, the Council recommended that a proposed rule be submitted to the Secretary for review that would implement mandatory careful release measures for halibut. These measures would be applicable to all hook-and-line vessels fishing for groundfish off Alaska. The Council further recommended that NMFS, in cooperation with the IPHC, use the best information available to derive mortality rate assumptions for observed and unobserved vessels using careful release methods.

Under the proposed rule, the operators of all vessels fishing for groundfish with hook-and-line gear would be required to use careful release procedures. These procedures would require that halibut caught on groundfish hook-and-line gear be released outboard of the vessel's rails by one of the following methods: (1) Cutting the gangion; (2) positioning the gaff under the hook for the purpose of twisting the hook from the halibut; or (3) using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel to straighten the hook. In addition, puncturing a halibut with any device (including "gaffing" a halibut) or permitting the halibut to come in contact with the vessel or any gear attached to a vessel, which contact causes, or has the capability of causing, the halibut to be punctured by the gaff or other device or stripped from the hook, would be prohibited.

Implementation of the rule would reduce halibut bycatch mortality rates. Reducing the mortality rates of halibut taken incidentally by hook-and-line gear would increase the amounts of groundfish harvested because fisheries would less likely be closed prematurely because the halibut bycatch limits are taken. The mandatory careful release measures proposed in this rule would also reduce overall halibut mortality in the hook-and-line gear fisheries because TAC amounts of groundfish are more likely to be harvested before halibut bycatch mortality limits are reached. Without mandatory careful release measures, such as those proposed in this rule, the hook-and-line fleet will continue to compete for groundfish at higher than necessary halibut bycatch mortality rates. The IPHC's tagging study; and (2) for unobserved vessels, the rate is the midpoint between the 1993 mortality rate and the mortality rate for observed vessels under the implementation of careful release measures and the rate assumed for 1993 in absence of careful release measures. Since mandatory careful release procedures cannot be verified on unobserved vessels, the 1993 mortality rates were averaged to reflect the expected level of compliance. Assumed mortality rates under the proposed rule will lower mortality rates by about 50 percent. The implementation of mandatory careful release procedures and associated reductions in assumed bycatch mortality rates would provide hook-and-line fishermen an incentive to comply with these procedures because all vessel operators benefit from lower halibut bycatch mortality rates.

Additionally, the rates attained through careful release will be assessed inseason, and compared to available data on: (1) Bycatch rates; (2) condition of halibut; and (3) halibut mortality. Assumed halibut mortality rates could be adjusted accordingly, if deviations from the assumed rates are substantiated. A reduction in the assumed mortality rates could allow more groundfish to be harvested under halibut bycatch mortality restrictions, increase revenues to the hook-and-line fleet, and potentially reduce total halibut bycatch mortality of Pacific halibut in the hook-and-line fisheries.

Under mandatory careful release measures, assumed mortality rates for the 1993 hook-and-line fisheries would be based on the best available information, including 1990 and 1991 observer data and data from the IPHC tagging studies of carefully released halibut. Under the proposed rule, the following assumed mortality rates would be used for the 1993 hook-and-line groundfish fisheries:


<table>
<thead>
<tr>
<th>Species</th>
<th>Observed Vessels</th>
<th>Unobserved Vessels</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSAI all</td>
<td>12.5 percent</td>
<td>15.0 percent</td>
</tr>
<tr>
<td>GOA sub-basin</td>
<td>14.0 percent</td>
<td>17.0 percent</td>
</tr>
<tr>
<td>GOA</td>
<td>11.5 percent</td>
<td>14.0 percent</td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Assumed mortality rates for the hook-and-line fisheries were derived from data as follows: (1) For observed vessels, the rate is the midpoint of the assumed mortality rate derived from 1990 and 1991 observer data and a 7 percent discard mortality rate derived from the IPHC's tagging study; and (2) for unobserved vessels, the rate is the midpoint between the 1993 mortality rate for observed vessels under the implementation of careful release measures and the rate assumed for 1993 in absence of careful release measures.

Since mandatory careful release procedures cannot be verified on unobserved vessels, the 1993 mortality rates were averaged to reflect the expected level of compliance. Assumed mortality rates under the proposed rule yield an overall decrease in the discard mortality rate from rates experienced without careful release. As data become available for 1992 and 1993, assumed mortality rates will be reevaluated. If significant changes in these rates occur as data become available, the mortality rates may be changed accordingly. A midseason assessment of these assumptions would provide fishermen a measure of the effectiveness of their efforts and may allow more of the TACs to be harvested.

NMFS anticipates that the proposed implementation of mandatory careful release procedures would have an impact on all hook-and-line vessels fishing for groundfish off Alaska. However, the cost of implementation to each vessel operator is not expected to be significant relative to gross annual receipts. Furthermore, the potential benefits of reduced halibut bycatch mortality to the groundfish fisheries and the directed halibut fisheries would be justified these costs.

NMFS, upon reviewing the reasons for the proposed actions concurs with the Council's recommendation. NMFS proposes that mandatory careful release
measures be implemented for halibut taken incidental to the hook-and-line gear fisheries for Alaska groundfish.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable laws. NMFS and the IPHC prepared an EA for this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 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 consumer, 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.

NMFS prepared an IFRA as part of the RIR, which concludes that this proposed rule, if adopted, would have a significant net economic benefit on a substantial number of small entities. In 1992, 2,047 vessels were issued Federal permits to use hook-and-line gear to fish for Alaska groundfish in Federal waters. Most of these vessels deliver to shoreside processing operations and are considered small entities for purposes of the Regulatory Flexibility Act because gross annual receipts are less than $2 million per vessel. All hook-and-line vessels would be impacted by the proposed action to prohibit the release of Pacific halibut caught with hook-and-line gear by any method other than mandatory careful release. NMFS has determined that the amount of groundfish harvested by hook-and-line vessels in waters off Alaska would decrease due to this proposed action. This rule does not include 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.

The Regional Director determined that fishing activities conducted under these regulations implementing the preferred action would not affect any endangered or threatened species listed under the Endangered Species Act in a way that was not already considered in previous biological opinions. Therefore, NMFS has determined that no further section 7 consultation is required for adoption of this action.

The Regional Director determined that fishing activities conducted under this rule would not adversely impact marine mammals.

List of Subjects in 50 CFR Parts 672 and 675.

Fisheries, Reporting and recordkeeping requirements.

PART 672—GROUNDFISH OF THE
GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

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

2. In §672.7, paragraph (k) is added to read as follows.

§672.7 General prohibitions.

(k) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title.

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than the following:

(i) Cutting the gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut;

or

(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be punctured by the gaff or other device or stripped from the hook.

PART 675—GROUNDFISH OF THE
BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows:

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

4. In §675.7, paragraph (m) is added to read as follows.

§675.7 General prohibitions.

(m) With respect to halibut caught with hook-and-line gear deployed from a vessel fishing for groundfish, except for vessels fishing for Pacific halibut in accordance with part 301 of this title.

(1) Fail to release the halibut outboard a vessel's rails;

(2) Release the halibut by any method other than the following:

(i) Cutting the gangion;

(ii) Positioning the gaff on the hook and twisting the hook from the halibut; or

or...
(iii) Straightening the hook by using the gaff to catch the bend of the hook and bracing the gaff against the vessel or any gear attached to the vessel;

(3) Puncture the halibut with a gaff or other device; or

(4) Allow the halibut to contact the vessel, if such contact causes, or is capable of causing, the halibut to be punctured by the gaff or other device or stripped from the hook.

[FR Doc. 93–7845 Filed 4–5–93; 8:45 am]

BILLING CODE 3510–22–M
This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE
Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Public Law 90-177, Public Law 91-48, and Public Law 100-449 (hereinafter referred to as the "Act"), provides for limiting the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported, other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 by section 2(c) as adjusted by section 2(d) of the Act for calendar year 1993 is 1,144.7 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1993 is 1,256.1 million pounds.

Done at Washington, DC this 31st day of March, 1993.

Mike Espy, Secretary of Agriculture.

[FR Doc. 93-7952 Filed 4-5-93; 8:45 am]
BILLING CODE 3410-10-M

Animal and Plant Health Inspection Service

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

[FR Doc. 93-040-1]

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 13 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under "FOR FURTHER INFORMATION CONTACT.""

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

<table>
<thead>
<tr>
<th>Application No.</th>
<th>Applicant</th>
<th>Date received</th>
<th>Organisms</th>
<th>Field test location</th>
</tr>
</thead>
<tbody>
<tr>
<td>93-060-01</td>
<td>Northrup King Company</td>
<td>03-01-93</td>
<td>Soybean plants genetically engineered to express tolerance to the herbicide glyphosate.</td>
<td>Arkansas, Illinois, Iowa.</td>
</tr>
<tr>
<td>93-060-02</td>
<td>Pioneer Hi-Bred International, Incorporated.</td>
<td>03-01-93</td>
<td>Corn plants genetically engineered to express a viral coat protein for resistance to certain viruses and a marker gene for tolerance to the phosphinothricin class of herbicides.</td>
<td>Iowa, Nebraska.</td>
</tr>
</tbody>
</table>
### Application Details

<table>
<thead>
<tr>
<th>Application No.</th>
<th>Applicant</th>
<th>Date received</th>
<th>Organisms</th>
<th>Field test location</th>
</tr>
</thead>
<tbody>
<tr>
<td>93-060-03, renewal of permit 92-049-02, issued on 05-21-92</td>
<td>Monsanto Agricultural Company</td>
<td>03-01-93</td>
<td>Rape seed plants genetically engineered to express tolerance to the herbicide glyphosate.</td>
<td>Idaho.</td>
</tr>
<tr>
<td>93-060-04</td>
<td>Monsanto Agricultural Company</td>
<td>03-01-93</td>
<td>Tomato plants genetically engineered with a marker gene that confers herbicide tolerance and a gene that confers an increase in the soluble solid content of fruit.</td>
<td>Florida.</td>
</tr>
<tr>
<td>93-060-05</td>
<td>Monsanto Agricultural Company</td>
<td>03-01-93</td>
<td>Corn plants genetically engineered to express a delta-endorphin from Bacillus thuringiensis subsp. kurstaki for resistance to lepidopteran insects and a marker gene for tolerance to the herbicide glyphosate.</td>
<td>Minnesota.</td>
</tr>
<tr>
<td>93-060-06</td>
<td>Monsanto Agricultural Company</td>
<td>03-01-93</td>
<td>Corn plants genetically engineered to express a delta-endotoxin from Bacillus thuringiensis subsp. kurstaki for resistance to lepidopteran insects and a marker gene for tolerance to the herbicide glyphosate.</td>
<td>Indiana, Nebraska.</td>
</tr>
<tr>
<td>93-063-01</td>
<td>Miles Incorporated</td>
<td>03-04-93</td>
<td>Tobacco plants genetically engineered to express a stilbene phytoalexin synthase gene, which may confer resistance to fungi.</td>
<td>Florida, Kansas.</td>
</tr>
<tr>
<td>93-063-02</td>
<td>Interstate Psyco Seed Company</td>
<td>03-04-93</td>
<td>Corn plants genetically engineered for tolerance to the phosphonothrin class of herbicides.</td>
<td>Wisconsin.</td>
</tr>
<tr>
<td>93-063-03</td>
<td>Dairyland Seed Company, Incorporated</td>
<td>03-04-93</td>
<td>Soybean plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.</td>
<td>Florida.</td>
</tr>
<tr>
<td>93-063-05</td>
<td>American Crystal Sugar Company</td>
<td>03-04-93</td>
<td>Sugar beet plants genetically engineered to express two genes for tolerance to the herbicide glyphosate.</td>
<td>Minnesota, North Dakota.</td>
</tr>
<tr>
<td>93-067-01, renewal of permit 92-034-03, issued on 04-24-92</td>
<td>Heinz U.S.A</td>
<td>03-08-93</td>
<td>Tomato plants genetically engineered to express a pectin methyltransferase (PME) antisense gene to increase the soluble solid content.</td>
<td>California.</td>
</tr>
<tr>
<td>93-067-02, renewal of permit 90-360-01, issued on 04-24-93</td>
<td>University of Idaho</td>
<td>03-08-93</td>
<td>Potato plants genetically engineered to express a gene to confer tolerance to the herbicide bromoxynil.</td>
<td>Idaho.</td>
</tr>
</tbody>
</table>

Done in Washington, DC, this 31st day of March 1993.

Terry L. Medley,
*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 93-7953 Filed 4-5-93; 8:45 am]

**Agricultural Research Service**

**Intent To Grant an Exclusive Patent License**

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to British Technology Group USA, Gulph Mills, Pennsylvania, on U.S. Patent No. 4,530,935, "Insect Repellents," issued July 23, 1985, and U.S. Patent Application Serial Number 07/530,485, "Plant Transformation by Gene Transfer into Pollen," filed June 1, 1990. British Technology Group USA is a domestic corporation that is incorporated in the State of Delaware. Notice of availability for licensing of Patent No. 4,530,935 was given in the Federal Register on December 9, 1983, and such Notice for application for a license, promising therein to bring the benefits of said inventions to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument, pursuant to 37 CFR 404.11(c), which establishes that the grant of the license would not be consistent with the public interest to so license these inventions as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said inventions to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument, pursuant to 37 CFR 404.11(c), which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,
*Assistant Administrator*

[FR Doc. 93-7954 Filed 4-5-93; 8:45 am]
Federal Register / Vol. 58, No. 64 / Tuesday, April 6, 1993 / Notices 17827

Farmers Home Administration

Submission of Information Collection to OMB (Under Paperwork Reduction Act and 5 CFR Part 1320)

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The information collection requirement described below has been submitted to OMB for expedited clearance under 5 CFR 1220.16. The Agency solicits comments on subject submission. This action is necessary in order for the Agency to codify changes to 7 CFR Part 1965, subpart B, and 1965, subpart E, as required by the Housing and Development Act of 1967, the Housing and Urban Development Reform Act of 1989 (HR 1), technical amendments to HR 1 contained in the National Affordable Housing Act of 1990 (Cranston-Gonzales) and the Housing and Community Act of 1992. It is also to implement the Agency’s response to audit recommendations found in GAO/RCED-92–150 dated June 23, 1992.

These regulation changes are needed to improve protections for existing tenants in FmHA Multi-Family Housing projects that are allowed to prepay and specify tenant protection requirements mandated of project owners. The regulation also standardizes the method for developing incentive offered to borrowers, allowing FmHA to retain existing low-income housing for an average cost of $26,000 per unit versus approximately $36,000 per unit to develop new rental units. The effect of these regulation changes will foster consistent application for developing the incentives offered and facilitate processing prepayment requests.

ADRESSES: Interested persons are invited to submit comments regarding this submission. Comments should refer to the proposal by name and should be sent to: Lisa Grove, USDA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patrick Sheridan, Chief, Property Management Division, FmHA Housing Programs, Multi-Family Servicing and Property Management Division, USDA, Washington, DC 20250, Telephone (202) 720–1959.

SUPPLEMENTARY INFORMATION: The Agency has submitted the proposal for collection of information as described below, to OMB for clearance as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is requested that OMB approve this submission within 21 days.

The supporting statements attached explain the need for the changes to FmHA Regulation 1965–B, Security Servicing for Multiple Housing Loans, and Form FmHA 1944–33A, Consolidated Loan Agreement, Form FmHA 1944–34A, Consolidated RRH Loan Agreement, Form FmHA 1944–35A, Consolidated Loan Resolution, and Form FmHA 1965–16, Multiple Family Housing Reamortization Agreement, and the addition of FmHA Regulation 1965–E, Prepayment and Displacement Prevention of Multiple Family Housing Loans:

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507

Supporting Statements

7 CFR 1965–B, Security Servicing for Multiple Housing Loans

1. Explanation of the circumstances that make the collection of information necessary.

The Farmers Home Administration (FmHA) is authorized under Section 514, 515, 516 and 521 of Title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such multiple family housing projects are intended to meet the housing needs of persons or families having low-to-moderate-incomes, senior citizens, the handicapped, and domestic farm laborers. FmHA has the responsibility of assuring the public that the housing projects financed are owned and operated as mandated by Congress. The 1965–B regulation was issued to insure proper servicing actions are accomplished for projects financed with multiple family housing loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are carried out as intended and to improve the Agency's ability to assure the continued availability of the facilities financed under FmHA multiple housing programs to eligible users.

Without the provisions of this regulation, FmHA would be unable to provide the necessary guidance to the FmHA field staff to assist borrowers in processing servicing actions affecting their projects. FmHA also would not be able to quickly respond to servicing requests from borrowers, initiate servicing actions or establish a uniform procedure for processing such requests from borrowers. FmHA must be able to assure Congress and the general public that all projects financed with multiple family housing funds will be maintained for the purposes for which they are intended, and for the benefit of those they are mandated to serve.

Public Law 95–375 provides administrative powers for the Secretary of Agriculture to carry out the provisions of Title V of the Housing Act of 1949, as amended. This law provides for making rules and regulations necessary to carry out the purposes of Title V. The purpose of the applicable Sections 514, 515, 516 and 521 of the Housing Act as stated above is to provide rental housing to eligible low-income tenants (including very low-) and moderate-income tenants at affordable rental rates. FmHA has been charged with the responsibility of protecting the interest of the taxpayer's funds and to assure that the objectives of the loans and grants are carried out as intended. In an effort to carry out the responsibilities of assuring that the objectives of the law are met, it is required that information be collected to assure program objectives and integrity is maintained.

Public Law 88–352, "Civil Right Act of 1964 as amended, "Title VI Public Laws 90–284 and 93–383, "Civil Rights Act of 1968, "Titles VII and IX, Public Law 93–383, "Sex Discrimination, "Executive Order 11246, the Equal Credit Opportunity Act of 1974, and the "Fair Housing Amendments Act of 1988" are also applicable to the 514, 515, 516 and 521 programs. Civil Rights compliance reviews are conducted to assure nondiscrimination in these Federally assisted programs. The owners are, therefore, required to keep certain information, such as a list of applicants, list of tenants, verifications of income of the tenants, and records of rejected applicants, and make such information available to the compliance review offices.

The Housing and Community Development Act of 1987 required that rural rental housing borrowers wishing to prepay their FmHA financed loans must be offered a fair incentive to not prepay the loan when FmHA makes the decision that the housing continues to be needed to serve low- and moderate-income tenants. If the borrower rejects the incentive, the housing must be offered for sale to a nonprofit organization. Prepayment can only be accepted if FmHA decides there is no need for the housing or if no nonprofit organization can be found to purchase the project at fair market value.

Procedures to enact the Housing and Community Development Act of 1987 are currently contained in section 1965.90 and Exhibit E to 7 CFR 1965–B. When published in final form, 7 CFR 1965–E will replace prepayment procedures.
procedures contained in section 1965.90 and Exhibit E to 7 CFR 1965–E. The paperwork burden assigned to these two procedures will result in a reduction in paperwork burden for 7 CFR 1965–E. The paperwork burden for 7 CFR 1965–E will be submitted with the final 7 CFR 1965–E regulation.

2. Indicate how, and by whom, and for what purpose the information is to be used and the consequence to the Federal Program if the collection of the information was not conducted.

The information will be prepared and submitted to FmHA by the borrower or the borrower’s representative. FmHA forms and guides will be provided by FmHA to assist the borrower and/or representative in the preparation of information and to streamline the collection and review of the information.

The information required is collected on a project-by-project basis and is in accordance with the Housing Act of 1949, as amended, so that FmHA can provide guidance and be assured of compliance with the terms and conditions of loan, grant, and/or subsidy agreements.

Respondents providing the information covered by this justification can be classified as either borrowers or attorneys. Collectively, borrowers include individuals, State or local governments, farms, businesses or other for-profit organizations, non-profit organizations, and small businesses or organizations. Attorneys include those representing both transferees and transferees. On occasion, representatives from other sources of credit may also be required to provide information.

Failure by FmHA to monitor borrower operations through review of collected information and consultive supervision would reasonably lead to noncompliance with statutory intent in some instances and financial default in others.

Corrective action to remove such noncompliance or default would be costly to FmHA and the public in terms of program integrity, public confidence, dollars, staff morale, and time. In addition, failure to monitor borrower operations could result in a decrease in safe, affordable housing to tenants living in such FmHA financed multiple family type housing.

The Housing Act of 1949, as amended, and the Consolidated Farm and Rural Development Act authorizes FmHA to provide financial assistance to individuals, organizations, private nonprofit corporations, profit corporations, consumer cooperatives and public bodies that are unable to obtain credit through regular commercial sources at reasonable rates and terms. The facilities financed by this financial assistance include, but are not limited to, multiple family housing projects, water and waste distribution systems, health care and fire protection facilities. The borrower/grantee organizations are required to prepare periodic FmHA financial reports to enable FmHA to fulfill its statutory mandate for supervision of borrower operations. Information is also required for eligibility determinations to allow continued participation in the program, as necessary, to achieve the objectives of the loan and to protect the interest of the Government and the tenants.

A summary of the information collection burden is described as follows:

Reporting Requirements—No Forms

The documents and descriptions that follow are non-form written communications or documentations prepared and presented by borrowers and/or their attorneys making servicing requests to FmHA. Such written communication is the minimum amount required to document the request and verify compliance with statutory, regulatory, or administrative requirements needed to maintain program integrity and assure the continued compliance with established procedures and regulations issued to meet the objectives of the respective multiple family housing loan or grant program. Information submitted is generally brief and to the point.

Request for Additional Indebtedness on Security Property

To maintain program integrity and assure the maintenance of the FmHA security property, borrowers are required to provide written requests to further encumber the property. Such requests are generally brief and succinct, citing the purpose and alternatives available. Average response time per person is .25 hours.

Consent of Liensholders

Before FmHA consents to any transaction which affects the security or lien position where other lien holders are involved, the consent of such other liensholders must be obtained. This consent is typically in the form of a letter which provides an agreement on the disposition of any funds resulting from the transaction and must be consistent with the respective loan program requirements. This consent is required to assure that program objectives continue to be met after the completion of the transaction and that FmHA’s security position has not been jeopardized. Average response time is .75 hours per person per incidence.

Organizational Membership Change

To assure the continued eligibility of borrower organizations, changes in the membership requires FmHA approval. Statutorily, the Agency is restricted to allowing only eligible borrowers to participate. To assure this continued eligibility, certain information must be submitted for approval. This includes a list of members; financial statements from general partners and stockholders with more than a ten percent interest in the project or a statement of net worth for limited partners, statements identifying identity of interest and experience, statements evidencing the lack of other available credit, evidence of the assumption of original or withdrawing partner’s obligations, and amendments to the organizational documents. These items are consistent with the obligation imposed by the Agency to carry out the Congressional mandate. Average response time per occurrence is 4.23 hours.

Opinion From Transferee’s Legal Counsel

This opinion is prepared by the transferee’s legal counsel to certify that the financial arrangements do not include any provisions which would knowingly be unacceptable to FmHA. This regulation provides explicit prohibitions against placing a lien on the project or project income to secure equity financing. Such financing is prohibited because it would adversely affect the rental rates of low and moderate income tenants, inhibit the Agency’s ability to effectively service loans, diminish security value, and reduce program integrity. This is a one-time response process and is maintained in the District loan file. Response time averages 0.5 person hours per transfer.

Advice of Transferee’s Attorney

The transferee will provide evidence of his/her attorney’s review of the loan agreement or resolution being assumed and opinion on the amendments being made to accurately reflect the transferee’s opinion. This information is being required to assure that a complete understanding of the obligations being assumed is reached before the transferee becomes obligated. It also provides the transferee with an opportunity to propose and adopt appropriate revisions to the original loan agreement/ resolution which may be more favorable in terms of the types of accounts and records which must be maintained and to comply with applicable regulations.
The response time averages 0.5 hours per response.

**Continued Liability Agreement**

This agreement will be used to acknowledge the continued liability of present debtors who transfer their loans to ineligible transferees and the debt is scheduled for payment in more than 5 years. This agreement is used to maintain program integrity and assure the timely payment of the account. Average response time is 10 minutes per person.

**Junior Creditor Agreement**

Creditors junior (subordinate) to the FmHA lien must agree in writing to forfall foreclosure until a discussion with FmHA is held. They must also give a reasonable notice of their proposed servicing action. The agreement must further specify any operating plans they may have in conjunction with their servicing action. This agreement permits FmHA the opportunity to verify its position and assure the objectives of the loan will not be prejudiced by the impending liquidation action by a junior creditor. This information is requested only in cases where a junior lien is being considered and is supplied by the potential lien holder. Average response time is 1.0 hour per incidence.

**Reporting Requirements—Forms**

All forms identified are used to provide and/or document servicing requests and approvals and to comply with basic eligibility requirements under the authorizing statutes and/or equal opportunity provisions.

**Form FmHA 1944–33A, Consolidated Loan Agreement**

This form is used by corporations operating on a nonprofit, limited profit or profit basis to consolidate two or more Loan Agreements. Execution of this agreement results in the borrower consolidating reporting requirements for eligible projects, thus reducing the reporting burden for the borrower and the review time by FmHA staffs. Average response time is 15 minutes per response.

**Form FmHA 1944–35A, Consolidated Loan Agreement**

This form is used by corporations operating on a nonprofit, limited profit or profit basis to consolidate two or more Loan Agreements. Execution of this agreement results in the borrower consolidating reporting requirements for eligible projects, thus reducing the reporting burden for the borrower and the review time by FmHA staffs. Average response time is 15 minutes per response.

**Form FmHA 1945–16, Reamortization Agreement**

This is a new form that has been in use since 6/91. OMB clearance was inadvertently omitted. This agreement will be used to modify the payment schedule of a promissory note. It provides the borrower the opportunity to operate successfully and carry out the purpose of the loan. Average response time is 30 minutes per response.

3. Describe any consideration of the use of improved information technology to reduce burden and any technical or legal obstacles to reducing burden.

The reporting burden identified is of a specific nature pertaining to a unique project. Because of this specificity and the unspecified format, improved information technology would not avail itself to reducing the burden. Technical or legal obstacles to reduce the burden would be encountered because each project/borrower is unique and involves a unique set of circumstances that cannot be brought into a uniform format.

4. Describe efforts to identify duplication.

Every effort has been made to reduce duplication in the information collection associated with this regulation. Whenever possible, requirements have been eliminated and flexibility provided to allow borrowers the opportunity to provide the information in whatever format is available to them. In cases where FmHA already has the information, the borrower need only refer to the existing information rather than repeat it.

5. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in the preceding item 2.

The information requested is not similar to that found elsewhere in the program. It is reactionary to the unique request of the borrower. No other servicing reports are available for use or modification. The borrower would advise if original data already provided were still appropriate.

6. Methods used in the collection of information to minimize the burden on borrowers.

Every effort has been made to minimize time, effort, and cost to small or unsophisticated borrowers. The information required is not inconsistent with the actions of a prudent businessman involved with a real estate transaction.

7. Describe the consequence to the Federal program if the collection were conducted less frequently.

The frequency for collection of information established by FmHA has been determined by many years of experience in administering a financial assistance program in general and, more specifically, administering a multi-family housing program. Experience has revealed to FmHA that lack of collected information can lead to misunderstandings of statutory intent by borrowers. Consequently, the time and cost to FmHA to correct any misunderstanding diverts FmHA resources (time, money, and staff) from efficiently pursuing efforts to meet the mandated objectives of servicing the needs of eligible and qualified members of the rural public. At the same time, FmHA is cognizant that many borrowers meet or comply with statutory intent and should not be unnecessarily burdened with reporting requirements. Further, lack of information upon which to base servicing options and decisions could lead to potential fraud, abuse, and waste in the multiple family housing program and the inability to take corrective action at an early date.

8. Explain any special circumstances which require information to be recorded in a manner inconsistent with the guidelines in 5 CFR 1320.6.

This regulation is consistent with the information collection and reporting requirement guidelines contained in 5 CFR 1320.

9. Describe efforts to consult with persons outside the agency to obtain their views on the information to be recorded.

The following organizations and their representatives were consulted in the process of reviewing any revisions to the 1965–B regulation to obtain their viewpoints on all aspects, i.e. consistency with the law, clarity, reporting burden, reporting format, and the elements of data to be recorded, disclosed, or reported:

Consultation with the above organizations involved meeting with committees of persons on behalf of the respective organizations. The discussions revealed a divergence of opinion on some topics but no major problems were identified that could not be resolved.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

The Privacy Act and Freedom of Information Act governs confidentiality of any information received.

11. Provide additional justification for any questions of a sensitive nature that are commonly considered private.

The reporting requirements of this regulation do not ask any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private in nature.

12. Provide estimates of annualized cost to the Federal Government and to the respondents.

The estimated annual cost to the Federal Government for FmHA to revise and administer this regulation is based on the approximate amount of time that employees directly involved in the preparation and administration of the regulation times an average cost factor. The cost factor includes salaries, personnel benefits, travel, communications, utilities, rent, printing and reproduction, supplies and materials, equipment, insurance claims, indemnities, etc. Therefore, the annual cost to the Federal Government is $550,000.

Three wage classes are used to estimate cost of public burden (Class I—legal; Class II—other lenders; and Class III—owner). These wage classes are based on current knowledge of the Multiple Family Housing Management and Servicing staff in the National Office of Farmers Home Administration. The staff keeps current on cost information through field visits with FmHA field staff, the public and through review of publications.

The estimated annual cost to the public is as follows:

<table>
<thead>
<tr>
<th>Wage Class</th>
<th>Cost (in dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I—Legal</td>
<td>$86,580</td>
</tr>
<tr>
<td>Class II—Others</td>
<td>820</td>
</tr>
<tr>
<td>Class III—Owner</td>
<td>2,575</td>
</tr>
</tbody>
</table>

Total annual cost to the public: $89,975
<table>
<thead>
<tr>
<th>Section of regulations</th>
<th>Title</th>
<th>Form No. (if any)</th>
<th>Estimated number of respondents</th>
<th>Reports filed annually</th>
<th>Total annual responses ( (d) \times (e) )</th>
<th>Estimated number of man-hours per response ( (f) \times (g) )</th>
<th>Estimated total man-hours ( (f) \times (g) )</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965.55(a)(9)</td>
<td>Request for Additional Indebtedness on Security Property.</td>
<td>Written</td>
<td>20 On occasion</td>
<td>20</td>
<td>0.25</td>
<td>5.0</td>
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<tr>
<td>1965.61(f)</td>
<td>Consent of Lien Holders</td>
<td>Written</td>
<td>20 On occasion</td>
<td>20</td>
<td>0.75</td>
<td>15.0</td>
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<tr>
<td>1965.63(e)</td>
<td>Organizational Membership Changes</td>
<td>Written</td>
<td>300 On occasion</td>
<td>300</td>
<td>4.25</td>
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<tr>
<td>1965.65(b)(3)(vi)</td>
<td>Opinion from Transfer's Legal Counsel</td>
<td>Written</td>
<td>200 On occasion</td>
<td>200</td>
<td>0.50</td>
<td>100.0</td>
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<tr>
<td>1965.65(c)(9)</td>
<td>Advice of Transferee's Attorney</td>
<td>Written</td>
<td>200 On occasion</td>
<td>200</td>
<td>0.50</td>
<td>100.0</td>
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</tr>
<tr>
<td>1965.65(d)(5)</td>
<td>Continued Liability Agreement</td>
<td>Written</td>
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<td>10</td>
<td>1.67</td>
<td>2.0</td>
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<td>1965.83(b)(4)</td>
<td>Junior Creditor</td>
<td>Written</td>
<td>20 On occasion</td>
<td>20</td>
<td>1.00</td>
<td>20.0</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Reporting Requirements—Forms</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965.68(d)(2)</td>
<td>Consolidated Loan Agreement</td>
<td>FmHA 1944-33A</td>
<td>10 On occasion</td>
<td>10</td>
<td>0.25</td>
<td>3.0</td>
<td></td>
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<td>1965.68(d)(2)</td>
<td>Consolidated Loan Agreement</td>
<td>FmHA 1944-34A</td>
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<td>50</td>
<td>0.25</td>
<td>13.0</td>
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<tr>
<td>1965.68(d)(2)</td>
<td>Consolidated Loan Agreement</td>
<td>FmHA 1944-35A</td>
<td>15 On occasion</td>
<td>15</td>
<td>0.25</td>
<td>4.0</td>
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<tr>
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<td>FmHA 1965-16 ...</td>
<td>100 On occasion</td>
<td>100</td>
<td>0.50</td>
<td>50.0</td>
<td></td>
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<tr>
<td></td>
<td><strong>Reporting Requirements Approved Under Other Numbers</strong></td>
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<td></td>
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<tr>
<td>1965.77(b)</td>
<td>Consent to Sale or Other Disposition of Security Property.</td>
<td>FmHA 465-1</td>
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<td>Docket total</td>
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<td></td>
<td></td>
<td></td>
<td>945</td>
<td>1,587.0</td>
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</table>
United States Department of Agriculture; Farmers Home Administration
Form FmHA 1944–33A (11–88)
Consolidated Loan Agreement
Form Approved, OMB No. 0575–0100; Approval Expires 2/96
☐ RH Insured Loan to an Individual Operating on a Profit Basis, or;
☐ RH Loan to an Individual Operating on a Limited Profit Basis
1. Parties and Terms Defined. This consolidated agreement dated
herein called “Borrower” whether one or more, whose post office address is
with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called
“the Government”, is made in consideration of loans, herein called
“the loans”, to Borrower in the amount of $made or insured, or to be
made or insured, by the Government pursuant to sections 515(b) of the
Housing Act of 1949 to build
projects. The loans may be sold and insured by the
Government. The loans shall be used solely for the specific eligible purposes
for which it is approved by the Government in order to provide rental
housing and related facilities for eligible occupants, as defined by the
Government in rural areas. Such housing and facilities and the land
constituting the site as herein called
“the housing”. The indebtedness and
other obligations of Borrower under the
notes evidencing the loans, the related
security instrument and any related
agreement are herein called the “loan
obligations”.
2. The following projects are
consolidated which involved
loans:

3. Equal Opportunity and Nondiscrimination Provisions. The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled “Equal Opportunity Agreement”, including an “Equal Opportunity Clause” to be incorporated in or attached as a rider to each
construction contract the amount of
which exceeds $10,000 and any part of
which is paid for with funds from the
loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled “Assurance Agreement” (Under
Title VI, Civil Rights Act of 1964), a
copy of which is attached hereto and
made a part thereof, and any other
undertakings and agreements required by the Government pursuant to lawful
authority.
4. Borrower Contribution. The amount of $was contributed from the
Borrower’s own funds for land purchase
or development.
5. Accounts for Housing Operations and Loan Servicing. The Borrower shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain
unsatisfied: a General Operating
Account, a Tax and Insurance Escrow
Account, a Security Deposit Account
and a Reserve Account.
a. General Operating Account. The Borrower shall from the Borrower’s own
funds deposit the General Operating
Account the total amount of
consisting of the individual
amounts listed in the loan agreement
being consolidated.
b. Reserve Account. Transfers at a rate not less than $annually which is
the total of the amounts listed in the
loan agreements being consolidated
shall be made to the Reserve Account
until the amount in the Reserve Account
reaches the sum of $and shall be
resumed at any time when necessary,
because of disbursements from the
Reserve Account to restore it to said
sum. Use of funds deposited to this
account will be in accordance with
FmHA Regulation 7 CFR 1930–C. With
prior consent of the Government, funds in the Reserve Account may be used by the Borrower.
Public reporting burden for this collection of information is estimated to average 15
minutes per response, including the time for reviewing instructions, searching existing
data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send
comments regarding this burden estimate or any other aspect of this collection of
information, including suggestions for
reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, room
404–W, Washington, DC 20250; and to the
Office of Management and Budget, Paperwork Reduction Project (OMB No.
0575–0100), Washington, DC 20503.
For any purpose desired by the
Borrower, provided the Borrower
determines that after such disbursement
(a) the amount in the Reserve Account
will be not less than that required by
subsection 4b to be accumulated by that
time and (b) during the next 12 months the
amount in the Reserve Account will
likely not fall below that required to be
accumulated by the end of such period.
To pay in dividends to the Borrower
of up to 8 percent per annum of the
Borrower’s initial investment of
provided Borrower determines
that after such disbursement
the amount in the Reserve Account will be
not less than that required by subsection 4b
and (b) during the next 12 months the
amount in the Reserve Account will
likely not fall below that required to be
accumulated by the end of such period.
6. Regulatory Covenants. So long as
the loan obligations remain unsatisfied, the Borrower shall comply with all
appropriate FmHA regulations and
shall:
a. Impose and collect such fees,
aves, rents, and charges that the
increase of the housing or any other property securing the loan obligations, and submit regular and
special reports concerning the housing or financial affairs.
b. Maintain complete books and
records relating to the housing's financial affairs, cause such books and
records to be audited at the end of each
calendar year, promptly furnish the
Government with a copy of
any other aspect of this collection of
information, including suggestions for
reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, room
404–W, Washington, DC 20250; and to the
Office of Management and Budget, Paperwork Reduction Project (OMB No.
0575–0100), Washington, DC 20503.
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Borrower, provided the Borrower
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records relating to the housing's financial affairs, cause such books and
records to be audited at the end of each
calendar year, promptly furnish the
Government with a copy of
any other aspect of this collection of
information, including suggestions for
reducing this burden to, Department of Agriculture, Clearance Officer, OIRM, room
404–W, Washington, DC 20250; and to the
Office of Management and Budget, Paperwork Reduction Project (OMB No.
0575–0100), Washington, DC 20503.
f. If required by the Government, modify and adjust any matters covered by clause (e) of this section.

g. Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

h. If the return on investment for any year exceeds 8 percent per annum of Borrower's initial investment for $_______, the Government may require that the Borrower reduce the following year and/or refund the excess return on the investment to the tenants or use said excess in a manner that will best benefit the tenants.


a. It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

b. Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, in related agreement executed by Borrower in connection with the loan.

c. The provisions of this agreement are representations to the Government, to induce the Government, to consolidate the loan agreements of or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

d. Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

e. Any notice, consent, approval, waiver or agreement must be in writing.

f. This resolution may be cited in the security instrument and any other instruments as the “Consolidated Loan Agreement of _______ 19_______.

g. Borrower previously entered into Loan Agreements with the Government having the following dates

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
</table>

h. This Consolidated Loan Agreement shall be effective on the date it is approved by Government.

Witness

Borrower

Witness

Borrower

(Approval Date)

(Approval Official)

Form Approved; OMB No. 0575–0100

Approval Expires 2/96

Consolidated RHRR Loan Agreement

☐ To a Partnership Operating on a Profit Basis

☐ To a Limited Partnership Operating on a Profit Basis

☐ To a Partnership Operating on a Limited Profit Basis

☐ To a Limited Partnership Operating on a Limited Profit Basis

1. Parties and Terms Defined. This consolidated agreement dated ________ of the ________, ________, a Partnership, duly organized and operating under _______, herein called “Partnership”, whose post office address is ________, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called “the Government”, is made in consideration of loans, herein called “the loans”, to Partnership in the amount of $_______ made or insured, or to be made or insured, by the Government pursuant to sections 515(b) of the Housing Act of 1949 to build projects. The loan may be sold and insured by the Government. The loans be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called “the land”. The indebtedness and other obligations of the Partnership under the notes evidencing the loans, the related security instrument and related agreement are herein called the “loan obligations”.

2. The following projects are consolidated which involve ________ loans:

3. Execution of Loan Instruments. To evidence the loan the Partnership has issued promissory notes (herein referred to as “the note”), signed by ________, for the amount of the loan, payable in installments over a period ________, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government, are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Partnership under the note, the related security instrument, and any related agreement are herein called the “loan obligation”.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing
reviewing the collection of information.

Paperwork Reduction Project (OMB No. 0575-0100), Washington, D.C. 20503.

4. Equal Opportunity and Nondiscrimination Provisions. The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400-1 entitled “Equal Opportunity Agreement”, including an “Equal Opportunity Clause” to be incorporated in or attached to a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400-4, entitled “Assurance Agreement (Under Title VI, Civil Rights Act of 1964)”, a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

5. Borrower Contribution. The amount of $_________was contributed by the Partnership from its own funds for the land purchase or development.

6. Accounts for Housing Operations and Loan Servicing. The Partnership shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930-C so long as the loan obligation remains unsatisfied; A General Fund Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

   a. General Operating Account. By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Partnership shall from its own funds deposit in the General Operating Account the total amount of $_________consisting of the individual amounts listed in the loan agreements being consolidated.

   b. Reserve Account. Transfers at a rate not less than $_________annually which is the total of the amounts listed in the loan agreements being consolidated shall be made to the Reserve Account and the amount in the Reserve Account reaches the sum of $_________and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930-C. With prior consent of the Government funds in the Reserve Account may be used by the Partnership.

   To pay dividends to the partners of up to 6 percent per annum of the borrower’s initial investment of $_________, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period. To pay dividends to the partners or for any other purpose desired by the Partnership, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will not be less than that required by subsection 6b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

7. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Partnership shall comply with all appropriate FmHA regulations and shall:

   a. Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

   b. Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

   c. If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

   d. Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the agreement shall prevail and govern.

   e. Unless the Government gives prior consent:

      (1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

      (2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

      (3) Not change the membership by either the admission or withdrawal of any general partner(s) nor permit the general partner(s) to maintain less than an aggregate of 5 percent financial interest in the organization nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

      (4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

      f. Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930-C to the Government for prior review.

      g. If required by the Government, modify and adjust any matters covered by clause (f) of this section.

      h. Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

      i. Not alter, amend, or repeal without the Government’s consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

      j. Do other things as may be required by the government in connection with the operation of the housing, or with any of the Partnership’s operations or affairs which may affect the housing, the loan obligations, or the security.

      k. If return on investment for any year exceeds 8 percent per annum of borrower’s initial investment of $_________, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

a. It is understood and agreement by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

b. The provisions of this agreement are representations to the Government, to induce the Government, to consolidate the loan agreements of the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

c. Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

d. Any notice, consent, approval, waiver, or agreement must be in writing.

e. This agreement may be cited in the security instrument and any other instruments and documents related agreement are herein called the "Consolidated Loan Agreement" of _______.

g. This Consolidated Loan Agreement shall be effective on the date it is approved by Government.

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
</table>

| Partnership Name | By: |
| Witness | Witness | Witness |
| Borrower | Borrower | Borrower |

Approval Date

Approval Official

Position 5

Form Approved | OMB No. 0575-0100
Approval Expires | 2/96

United States Department of Agriculture; Farmers Home Administration

Consolidated Loan Resolution

☐ RRH Loan to a Broadly Based Nonprofit Corporation
☐ RRH Loan to a Profit Type Corporation
☐ RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis

Consolidated Loan Resolution of _______.

Resolution of the Board of Directors of the Corporation providing for consolidation of loan resolutions totaling $_______ to finance rental housing and related facilities in a rural area for the collection, handling, and disposition of income, the issuance of installment, promissory note and real estate security instrument, and related matters.

Whereas _______ (herein referred to as the "Corporation") is a corporation duly organized and operating under _______, the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas. The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill.

Be it Resolved:

1. Application for Loan. The Corporation has applied for and obtained loans (herein called "the loans") totaling $_______ from the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to sections 515 of the Housing Act of 1949. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing".

2. The following projects are consolidated which involve_______ loans:

3. Execution of Loan Instruments. To evidence the loans the Corporation has issued a promissory notes (herein referred to as "the Notes"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loans, payable in installments over a period bearing interest at rates and containing other terms and conditions, prescribed by the Government. To secure the notes or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation".
Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0100), Washington, D.C. 20503.

4. Equal Opportunity and Nondiscrimination Provisions. The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing regarding nondiscrimination in the use and occupancy of housing; (b) Farmers Home Administration Form FmHA 400-1 entitled “Equal Opportunity Agreement” including an “Equal Opportunity Clause” to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan; and (c) Farmers Home Administration Form FmHA 400-4 entitled “Assurance Agreement” (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

5. Borrower Contribution. The amount of $_________was contributed from the corporation’s own funds for the land purchase or development.

6. Accounts for Housing Operations and Loan Servicing. The Corporation shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930-C as long as the loan obligations remain unsatisfied: A General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. General Operating Account. The Corporation shall, from its own funds, deposit in the General Operating Account the total amount of $_________consisting of the individual amounts listed in the loan resolutions being consolidated.

b. Reserve Account. Transfers at a rate not less than $_________annually which is the total of the amounts listed in the loan resolutions being consolidated shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $_________and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930-C. With prior consent of the Government funds in the Reserve Account may be used by the Corporation to pay dividends to stockholders or for any other purpose duly authorized by the board, of up to 8 percent per annum of the borrower’s initial investment of $_________provided the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

To pay dividends to stockholders or for any other purpose duly authorized by the board, provided the board determines that after disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

For any other purpose duly authorized by the board, provided the board determines that after disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

7. Regulatory Covenants. So long as the loan obligations remain unsatisfied, the Corporation shall comply with all applicable FmHA regulation and shall:

a. Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

b. Maintain complete books and records relating to the housing’s financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government with a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

c. If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

d. Unless the Government gives prior consent:

(a) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer of encumbrances of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) No cause of permit the issue or transfer of stock, borrow any money, nor incur any liability outside from current expenses as defined in section 7 which would have a detrimental effect on the housing.


a. It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and
that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

b. The provisions of this resolution are representations to the Government, to induce the Government, to consolidate the loan resolutions of the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provision of this resolution or any requirement made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable, and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

c. Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

d. Any notice, consent, approval, waiver, or agreement must be in writing.

e. This resolution may be cited in the security instrument and any other instruments as the “Consolidated Loan Resolution of ________.”

f. Borrower previously entered into Loan Resolutions with the Government having the following dates

All such previous loan resolutions are consolidated into this Consolidated Loan Resolution and the multifamily housing units covered by such previous loan resolutions shall be operated as a single project under the terms and conditions of this Consolidated Loan Resolution. Violation of this Consolidated Resolution shall constitute an event of default under the security instruments which may be described in such previous loan resolutions.

Borrower has delivered to Government several evidences of debt which provide for payments on various days of each month. To provide for orderly administration of the indebtedness, borrower agrees to change the scheduled payment date on the following promissory notes, assumption agreements, or reamortization agreements to the first day of each following month until the debt evidenced by each instrument described is paid in full:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
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</thead>
<tbody>
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</table>

This Consolidated Loan Resolution shall be effective on the date it is approved by Government.

CERTIFICATE

The undersigned,__________, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certify that the foregoing is a true copy of a resolution duly adopted by the board of directors on __________, 19____, which has not been altered, amended, or repealed.

(Borrower)

(Borrower)

(Billing Code 3410-07-M)
## MULTIPLE FAMILY HOUSING REAMORTIZATION AGREEMENT

**INSTRUCTIONS** — Type or print in capitalized elite type in spaces marked ( ).

<table>
<thead>
<tr>
<th>1</th>
<th>Borrower Case Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Project Number</td>
</tr>
<tr>
<td>3</td>
<td>Loan Number</td>
</tr>
<tr>
<td>4a</td>
<td>Borrower Name</td>
</tr>
<tr>
<td>b</td>
<td>Project Name</td>
</tr>
<tr>
<td>5</td>
<td>Type of Reamortization (see FMI)</td>
</tr>
<tr>
<td>6</td>
<td>Date of Reamortization</td>
</tr>
<tr>
<td>7</td>
<td>Total Amount of Reamortization</td>
</tr>
<tr>
<td>8</td>
<td>Type of Note Code (see FMI)</td>
</tr>
<tr>
<td>9</td>
<td>Bond Code</td>
</tr>
<tr>
<td>0 = Not Applicable</td>
<td></td>
</tr>
<tr>
<td>1 = Serial Bonds</td>
<td></td>
</tr>
<tr>
<td>2 = Single Bond</td>
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<tr>
<td>10</td>
<td>Repayment Period</td>
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<tr>
<td>11</td>
<td>Note Interest Rate</td>
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<tr>
<td>12</td>
<td>Approval Date</td>
</tr>
</tbody>
</table>

**Complete Items 13 Through 15 For Labor Housing Daily Interest Accrual**

| 13 | Interest Only Due Date |
| 14 | Daily Interest Accrual Installment Amount |

**Complete Items 16 Through 19 For Delinquency Reamortization Only**

| 16 | Delinquent Interest |
| 17 | Past Due Interest |
| 18 | Past Due Principal |
| 19 | Accrued Interest Reamortized |

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Public reporting burden for this collection of information is estimated to average 1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0100), Washington, D.C. 20503. Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

*Form Approved OMB No. 0575-0100 Approval Expires 2/96*
The United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (called the "Government"), is the owner and holder of a promissory note or assumption agreement in the principal sum of _______ Dollars ($______), plus interest on the unpaid principal of _______% per year which was made or assumed by __________ and ________, (called "I/we"), dated ________, 19______, and payable to the order of the Government. The unpaid principal balance (including advances) is $_______. The interest due thereon is $_______. The total debt to date is $_______. The late fee to date is $_________, will be due and payable on ________, 19______, and each thereafter, regular installments each in the amount of _______, will be due and payable on ________, 19______, and each thereafter, the payment schedule (which includes the due date of the final installment, and the method of applying payments on the account). Upon default in the payment of any one of the above installments or in the case of failure to comply with any of the conditions and agreements contained in the above-described note or assumption agreement or the instruments securing it, the Government at its option may declare the entire debt immediately due and payable and may take any other action authorized therein.

(Borrower)

7 CFR 1965-E, Prepayment and Displacement Prevention of Multiple Family Housing Loans

1. Explanation of the circumstances that make the collection of information necessary.

The Housing and Community Development Act of 1987 required that when Rural Rental Housing borrowers wished to prepay their loans, FmHA must first decide if the housing continues to be needed to serve low-income families and tenants, and if so, to offer the borrower a fair incentive to not prepay the loan. If the borrower rejects the incentive, the housing must be offered for sale to a nonprofit organization or public agencies. Only if no nonprofit organization or public agencies can be found to purchase the project at the fair market value can the loan be prepaid.

Procedure to enact this law was originally written as an interim rule as section 1965.90 and Exhibit E to 7 CFR 1965-B. This regulation will replace those portions of 7 CFR 1965-B dealing with prepayment. The paperwork burden assigned to these sections will be transferred to 7 CFR 1965-E.

2. Indicate how, and by whom, and for what purposes the information is to be used and the consequence to Federal program if the collection of information was not conducted.

When a request to prepay a rural rental housing loan is received, FmHA must determine the need for the housing to remain in the low-income program. FmHA must also determine the extent to which any incentive offer to keep the housing within the FmHA program. The incentive offer is based on the local housing market so as to be fair to the borrower. For FmHA to make these determinations, the borrower must submit sufficient documentation on the local housing market, as well as documentation that prepayment can actually be made. This documentation is the bulk of this paperwork burden package. The remainder of the package deals either with minimal steps to be taken in the process or abbreviated forms of applications for either incentive loans or loans to nonprofits or public agencies to purchase the project.

A summary of the information collection burden is described as follows:

Reporting Requirements—No Forms

Nonprofits and public agencies wishing to be notified of prepayment requests

National and regional nonprofit organizations and public agencies interested in purchasing projects under this regulation must contact the National Office of the Farmers Home Administration to have their names placed on a potential purchaser list. Local nonprofit organizations and public agencies which wish to only purchase projects in one District need only contact the applicable FmHA District Office. The notification to Farmers Home Administration must be updated annually. Average response time is 5 minutes per response.

Borrower submits prepayment request

For Farmers Home Administration to determine the borrower's ability to prepay and the need for the rental housing to remain in the low-income program, the borrower must submit documentation on the local housing market and the ability to prepay. This documentation is the bulk of this paperwork burden. Average response time is 5 minutes per response.

Tenant requests Letter of Priority Entitlement (LOPE)

Farmers Home Administration must immediately notify each tenant that a request for prepayment has been received and advise the tenant that all displaced tenants and those experiencing rent overburden due to the proposed prepayment will be eligible for Letters of Priority Entitlement that will place them at the top of all occupancy waiting lists for any FmHA project in any location for which they qualify. Average response time is 5 minutes per response.

Borrower accepts or rejects incentive package

Within 30 days, the borrower must accept or reject the incentive offer in writing. Average response time is 5 minutes per response.

Borrower advertises project for sale to a nonprofit or public agency

If no incentive agreement is reached between Farmers Home Administration and the borrower and the prepayment cannot be accepted because a need remains for the housing and the borrower does not qualify for an exception, the borrower must offer to sell the project to a nonprofit organization or public agency. The borrower must first advertise the housing for sale to qualified local nonprofit organizations and public
agencies. If no local nonprofit organization or public agency submits an offer to purchase the project, the borrower is expected to contact each organization or agency on the regional or nationwide potential buyer list with an offer to sell and with enough information about the project to allow the prospective purchaser to make an informed decision. Average response time is one hour per response.

Recordkeeping Requirements

Payment in full

After Farmers Home Administration has recommended that prepayment can be accepted, the borrower must post a notice of the restrictive-use provisions in a public area until all restrictive-use provisions expire. In addition, the borrower must maintain records that document compliance with the restrictive-use provisions and must certify annually to Farmers Home Administration that units are rented to appropriate tenants at appropriate rents.

This regulation conforms very closely to the legislation, thus reduction in the amount of paperwork than most RRH loan applications. 7 CFR 1965—E will not be repeated. In other cases, however, such as housing market data, the existing information may be obsolete and current data would be required. The borrower would advise if the original data were still appropriate.

Methods used in the collection of information to minimize the burden on borrowers.

Every effort has been made to minimize time, effort, and cost to borrowers. Borrowers are allowed to refer to information already in the FmHA files. The borrower would provide the requested information upon which FmHA would base the decision to prepay.

Describe the consequence to Federal program if the collection were conducted less frequently.

The frequency of collection is once per borrower request to prepay. This cannot be changed since any other requests would be based on a different geographic location and/or a different period of time. Request to prepay are strictly the borrower’s option. If FmHA does not have current and appropriate information, the decision to accept or reject the prepayment request and the amount of an incentive offer, if any, would be made inappropriately.

Nonprofit organizations or public agencies who wish to be notified of any prepayment requests must update their data collection costs. This data collection is consistent with the guidelines contained in 5 CFR 1320.6.

Tenants requesting letters of priority may be informed of the process of reviewing any revisions to the regulations dealing with prepayment to obtain their viewpoints in all aspects.

Confidentiality is not assured, except for personal income information. Tenant and borrower financial information will not be revealed to the public. Other information would be subject to the “Freedom of Information Act” and the “Privacy Act.”

Provide additional justification for any questions of a sensitive nature that are commonly considered private.

No personal information is requested. All information concerns the project and the housing market.

Provide estimates of annualized cost to the Federal Government and to the respondents.

The annual cost for Farmers Home Administration to develop and administer this regulation is determined by multiplying the number of employees involved in the preparation, review and administration of the regulation times the National average cost factor. The average cost factor is a budget factor and includes salaries, personal benefits, travel and transportation expenses, supplies and materials, equipment, and etc.

Therefore, the annual cost to the Federal Government is $613,180.

The following wage classes were used to estimate cost of public burden.

Theses wage classes are based on current knowledge obtained in consultation with persons involved in the multiple family housing program.

Class I—Owner: $25.00/hr. x 519 man-hours=$12,975

Class II—Tenant: $4.00/hr. x 6 man-hours=24

Class III—Others: $20/hr. x 20=400

Total Cost to the Public=$13,407

Provide estimates of the burden of the collection of information.
The estimates of burden are based on information gained from the experience of borrowers and FmHA staff working together since the interim regulation covering prepayment has been in effect.

14. Explain reasons for changes in burden including the need for any increase.

There is no change in burden. This is the initial request for clearance.

15. For collections of information whose results are planned to be published.

The reporting requirements contained in this package do not require the results of such activity to be published for statistical use.

7 CFR 1965-E, PREPAYMENT AND DISPLACEMENT PREVENTION OF MULTIPLE FAMILY HOUSING LOANS

<table>
<thead>
<tr>
<th>Sec. of regulations</th>
<th>Title</th>
<th>Form No. (if any)</th>
<th>Estimated No. of respondents</th>
<th>Reports filed annually</th>
<th>Total annual responses (d) x (e)</th>
<th>Estimated No. of man-hours per response (f) x (g)</th>
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</thead>
<tbody>
<tr>
<td>Reporting requirements—</td>
<td>Nonprofits wishing to be notified of prepayment requests.</td>
<td>Written</td>
<td>200</td>
<td>1</td>
<td>200</td>
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<tr>
<td>1965.203</td>
<td>Borrower submits prepayment request.</td>
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<tr>
<td>1965.205 Exhibit C.</td>
<td>Borrower accepts or rejects incentive offer.</td>
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<td>On occasion</td>
<td>100</td>
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<td>1965.213(c)(6)</td>
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<td>On occasion</td>
<td>100</td>
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<td>1965.216(b)</td>
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<td>On occasion</td>
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The following are the information collection requirements contained in amendments to part 1965 for which OMB approval is requested:

Subpart B—Security Servicing for Multiple Housing Loans

49. Section 1965.55(a)(7) is amended by revising the reference from “§ 1965.90 of this subpart” to “Subpart B of this part.”

50. Section 1965.65 is amended by redesignating paragraphs (c)(11) through (15) as paragraphs (c)(12) through (16) respectively, redesignating paragraph (d)(7) as paragraph (d)(8), and redesignating paragraphs (f)(12) and (f)(14) as paragraphs (f)(13) and (f)(15) respectively; by adding new paragraphs (c)(11), (d)(7), and (f)(13); by revising the reference in the fourth sentence of the introductory text of paragraph (c)(10) from “§ 1944.215 (k) of Subpart E of Part 1944 of this chapter” to “§ 1944.215 (m) of Subpart E of Part 1944 of this chapter”; by revising the title of Form FmHA 1944-7 in the first sentence of newly redesignated paragraph (c)(12) from “Interest Credit and Rental Assistance Agreement” to “Multiple Family Housing Interest Credit and Rental Assistance Agreement”; by removing the title of Form FmHA 1944-50 in the fourth sentence of newly redesignated paragraph (c)(12); by revising the words “Other Real Estate (ORE)” to “Nonprogram Property (NP)” in the first sentence of newly redesignated paragraph (d)(8); and by revising paragraphs (b)(3), (d)(4), (c)(1), (c)(3), (c)(5), the first sentence of the introductory text of paragraph (c)(10), the Introductory text of paragraph (f)(4), the first sentence of paragraph (f)(7), paragraph (f)(8), and the last sentence (in parenthesis) of paragraph (f)(12) to read as follows:

Sec. 1965.65 Transfer of real estate security and assumption of loans.

* * * * *

(b) * * * * *

(3) The transferor shall not receive an equity payment as part of a transfer unless:

(i) All unpaid FmHA indebtedness against the property is assumed; and

(ii) All real estate and personal property taxes owed by the project are current; and

(iii) All FmHA loan payments on the property is assumed; and

(iv) The transfer is NOT being made in connection with a request for prepayment of the FmHA loan;

(A) Any equity payment paid to the transferor shall be paid in cash at the time of the transfer; or

(B) If paid on terms;

(1) The rates and terms are documented and the transferee is able to show that the obligation can be met from outside sources of income without jeopardizing the operation of the project. No rental or other project income (except authorized return to owner as specified in the loan agreement or resolution) shall be used to make payments on the obligation;

(2) No present or future liens will be attached to the secured project real estate, personal property, accounts, or revenue from the operation of the project;

(3) The equity payment to the seller will be provided from outside sources or from any authorized return to owner, and not from a planned sale of the project or additional membership interests beyond those
identified in the transferee's documents approved by FmHA.

(4) The seller does not and will not have a reversionary interest in the FmHA encumbered property;

(5) In the case of a limited partnership, the right of FmHA to approve or disapprove the substituting general partners in accordance with §1965.63 of this subpart has not and will not be superseded by any agreement between the purchaser and seller which implies prior consent by FmHA for partner changes in the case of default; and the right to assume partners' interests is restricted to only the limited partners' interests and such right does not include the general partners' interests;

(6) An opinion is provided from the transferee's legal counsel certifying that the financial and other arrangements comply with all FmHA requirements of this section; and

(7) An assignment of project income will be made by FmHA in accordance with the requirements of §1944.221(b) of Subpart E of Part 1944 of this chapter as additional security with the advice and guidance of OGC.

(ii) When the transfer is being made to avert prepayment of the FmHA loan, an equity loan may be made in accordance with the provisions of Subpart E of this part and Subpart E of Part 1944 of this chapter. If additional equity is to be paid by the purchaser to the seller above the amount of equity recognized by FmHA in the prepayment valuation of the project, the provisions of paragraph (b)(3)(v) of this section will apply.

(4) No payment will be received by the transferee for regular equity or equity in connection with a prepayment action unless all FmHA loans against the project are assumed in full or the payment to the transferee is applied in full against non-FmHA prior liens. The State Director may require that all or a part of any equity payment be applied against other FmHA loans owed by the borrower on other FmHA projects and not assumed or purchased in full or the total indebtedness will not be assumed, if the FmHA loans against the project being purchased are assumed in full and all prior liens paid in full.

(5) All transfers to eligible borrowers will subject the borrower to the appropriate restrictive-use provisions contained in Exhibits A-1 or A-2 of Subpart E of this part.

(3) For rental and RCH (as applicable) projects, the transferee's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferee's supervised bank account which are needed to complete project development, and any equipment purchased with project funds will be transferred to the transferee. Any funds remaining in an RA contract not disbursed by the transferee will be assigned to the transferee, unless RA is not needed for current eligible residents or another form of subsidy is to be used. Any RA determined to not be needed will be reassigned in accordance with the provisions of paragraph XV of Exhibit E to Subpart C of Part 1930 of this chapter. Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA, reserve and other accounts must be at the scheduled level at the time of transfer.

(5) A loan and/or grant may be made to the transferee in connection with a transfer subject to the policies and procedures governing the kind of loan and/or grant being made. Loan and/or grant funds may not be used, however, to pay equity to a transferee unless authorized in accordance with Subpart E of this Part to avert prepayment.

(10) When the transfer is NOT being made in connection with a request for prepayment of the FmHA loan, a limited profit RRH transferee's initial investment and rate of return in the project will remain the same as that originally provided to the transferee.

(11) When the transfer is being made to avert prepayment of the FmHA loan, the recognized equity and/or rate of return may be increased in connection with an incentive offer made under the provisions of Subpart E of this part.

(f) * * * * *

(4) An appraisal will be required for each transfer, except those completed on a same terms basis for which the State Director is satisfied that the security is adequate. (An appraisal will always be required for transfers on new terms.) An FmHA designated MHF appraiser will be responsible for preparing an appraisal report within 30 days of the District Director's receipt of the completed application when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferee. A new appraisal report is needed when the total indebtedness will not be assumed, or the State Director may accept an independent appraisal provided by the transferee. An FmHA designated MHF appraiser is unable to complete an appraisal within 30 days of the District Office's receipt of the completed application. If the last appraisal is less than 1 year old and the transfer is within the State Director's authority, the FmHA designated appraiser may supplement the present appraisal report, in lieu of preparing a new appraisal by attaching information on the present market value. A new appraisal will be required if the transfer is to a nonprofit organization in accordance with the provisions of paragraph XV of Exhibit E to Subpart C of Part 1930 of this chapter. Funds in the reserve account should be at the scheduled level and transferred to the transferee at the time of transfer. If an equity loan is to be made by FmHA, reserve and other accounts must be at the scheduled level at the time of transfer.

(7) The following paragraph is to be inserted in Form FmHA 1965–9 wherever the full amount of equity has not been paid in cash or through an equity loan made by FmHA to avert prepayment:

(8) All RRH, RCH, and LH loans including those approved prior to December 21, 1979, which are transferred to eligible applicants will become subject to the restrictive-use provisions of Section 502 (c) of Title V, Housing Act of 1949, as amended. The restrictive-use language set forth in the appropriate Exhibits A-1 or A-2 in accordance with Sections 1965.214(g), and 1965.216(c)(3) of Subpart E of this Part must be added, with the advice of OGC, to the assumption agreement, security instruments, and loan agreement/resolution. The restrictive-use period will begin on the date the transfer and assumption is closed.

(12) * * * * (Subsequent loans will not be made to pay equity unless authorized in accordance with Subpart E of this part to avert prepayment.)

(13) The following additional information is required for an equity loan to a nonprofit organization in conjunction with the transfer:

(i) Identity of interest statement between transferee and transferee,

(ii) Statement of experience of organization and all principals,

(iii) Management Plan and Agreement in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

(iv) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(v) Data on current tenants' incomes, rents and RA, and incomes of those on the waiting list to show amount of RA which will be needed for current tenants and other eligible occupants based on the proposed budget.

(viii) If rehabilitation will be undertaken at the time of the loan, plans and specifications and method of construction must be outlined.

(ix) A breakdown of packaging and administration costs to be paid with any advance to nonprofit organizations or public agencies purchasing a project to avert prepayment, if an advance has not previously been applied for.

(x) Unconditional request for initial operating funds and a detailed breakdown of expenses anticipated to be paid from the funds, and
51. Section 1965.68 is amended by redesignating paragraph (c)(8) as paragraph (c)(9); by adding a new paragraph (c)(10); by revising the reference in paragraph (c)(3) from “Subpart C of Part 1930 of this chapter” to “Exhibit B of Subpart C of Part 1930 of this chapter”; and by revising paragraph (c)(7) to read as follows:

Sec. 1965.68 Consolidation.

(a) The appropriate restrictive-use language set forth in Exhibit A-1 of Subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/resolution and security instruments, as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the consolidated loan or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

(b) For consolidation of loan agreements/resolutions of loans for which no loan to build or acquire new units was made on or after December 15, 1989, the restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A-1 of Subpart E of this part will be included in the loan agreement/resolution and security instruments of FmHA approval of the action. The restrictive-use period will begin on the date the consolidated loan or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

52. In Section 1965.70, paragraph (b)(3) is redesignated as (b)(4); a new paragraph (b)(3) is added; paragraph (a) is amended by revising the reference “§ 1965.90 of this subpart” to “Exhibit A-1 of Subpart E of this part”; paragraph (b) is amended by adding the word “or” to the end of subparagraph (2); and paragraph (d)(3) is revised to read as follows:

Sec. 1965.70 Reamortization.

(a) For consolidation of loan agreements/resolutions of loans for which no loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

(b) The borrower has received an equity loan as an incentive to avert prepayment, or a subsequent loan has been made to a nonprofit corporation or public agency to purchase a project to avert prepayment; or

(d) The prepayment restrictive-use provisions of Section 502(c) of Title V, Housing Act of 1949, as amended will apply. The appropriate restrictive-use language set forth in Exhibit A-1 of Subpart E of this part for RRH, RCH or LH loans will be added, with the advice of OGC, to the loan agreement/resolution and security instruments, as a condition of FmHA approval of the action. The restrictive-use period will begin on the date the reamortization agreement is effective.

53. Section 1965.77(d)(2)(iii) is amended by adding the words “and Subpart E of this part” after “§ 1965.90 of this subpart.”

54. In Section 1965.20, the introductory text of paragraph (c) is amended by revising the reference “Exhibit E of this subpart” to “Subpart B of this part”, paragraph (c)(1) is amended by revising the reference “Exhibit E of this subpart” to “Subpart B of this part”, and paragraph (d) is amended by revising the reference “paragraph VI A of Exhibit E of this subpart” to “Subpart E of this part”.

55. Section 1965.90 is revised to read as follows:

Sec. 1965.90 Payment in full.

(a) Prepayment of multi-family housing loans. Subpart B of this part must be complied with for all multi-family housing loans that are planned to be prepaid prior to the scheduled final due date of the loan.

(b) Borrower responsibility. Borrowers must advise the District Office servicing the account of any plan to pay the account in full 6 months prior to the date of the planned payment in full.

(c) FmHA responsibility. The FmHA District Office must ensure payments in full and releases of security are processed in accordance with Subpart D of Part 1951 of this chapter and other appropriate program requirements and regulations. FmHA’s interest in property insurance will be released in accordance with § 1806.4(c)(3) of Subpart E of this part (paragraph IV A 3 of FmHA Instruction 426.1). In all cases, references to County Supervisors will be construed to mean District Directors when applied to multi-family housing borrowers.

56. Section 1965.92 is amended by revising the reference of “Exhibit D” in the third sentence and “Exhibit D” in the last sentence to read “Exhibit A,” and by adding the phrase “within 50 days of the servicing action” to the end of the last sentence of the paragraph.

57. Section 1965.100 is amended by revising the first sentence to delete “collection of information” and insert “reporting and recordkeeping” in its place, to insert “contained” after “requirements”, and to insert “number” after “control”. The second sentence is revised by changing “5 minutes” to “10 minutes” and “.60 hours” to “1.67 hours”.

58. Exhibits B, C, E, E-1, E-2, E-3 and E-4, of subpart B to part 1951 are removed and exhibit D is redesignated exhibit A and exhibit F is redesignated exhibit B.

59. Subpart E of part 1951 is added to read as follows:

PART 1965—REAL PROPERTY

Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

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1965.205 Borrower request to prepay.
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1965.209 Restrictive-use provisions after prepayment.
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Exhibit A—1—Required Clauses for Active Borrowers With Projects Subject to Restrictive-Use Provisions as a Result of Specific Loan Making or Loan Servicing Actions.

Exhibit A—2—Required Clauses for Projects Made Subject to Restrictive-use Provisions When a Loan is Transferred to a Nonprofit Organization or Public Agency to Avert Prepayment.

Exhibit A—3—Required Clauses for Prepaid Projects Which Were Subject to Restrictive-use Provisions Prior to the Prepayment.

Exhibit A—4—Required Clauses for Prepaid Projects Which Became Subject to Restrictive-use Provisions at the Time of Prepayment.


Exhibit C—Checklist for Requesting Prepayment.

Exhibit D—Methodology for Determining Prepayment Incentives.

Exhibit D—1—Worksheet for Incentive Calculations.

Exhibit E—Administrative Guidance for Making Prepayment Determinations.

Exhibit F—Prepayment and Displacement Prevention Grant Agreement.

Exhibit G—1—Restrictive-Use Agreement (To be used with Exhibit A—3 of this subpart).

Exhibit G—2—Restrictive-Use Agreement (To be used with paragraph (A) to Exhibit A—4 of this subpart).
Tenant associations and cooperatives may organize in accordance with State and/or local statutes. Either type of organization must include as one of its primary purposes developing or managing low-income housing or community development projects, which meet the definition if they are organized as nonprofit organizations.

Market Area. The market area is the community in which the project is located and those outlying rural areas are impacted by the project (excluding all other established communities).

Minorities. Individuals such as members of the following groups: African-American, not of Hispanic Origin; Hispanic; American Indian or Alaska Native; Asian or Pacific Islander. Refer to FmHA Instruction 1900-A (available in any FmHA office) for further clarification and a description of each group.

Prepayment. A loan which has been paid by the borrower in full, before the loan maturity date. After a prepayment, no FmHA loan remains on the property and the property is removed from the FmHA program, although restrictive-use provisions may remain.

Prohibition on prepayment. Loans which may not be prepaid to the final amortization date as described in §1965.208 of this subpart.

Regional or national nonprofit corporation or public agency. Any public agency or nonprofit corporation meeting the conditions in §1965.216(c) of this subpart, which operates in an area larger than the local community and its trade area, or, if a nonprofit corporation, does not also have a broadly-based membership and board of director reflecting various interests in the community or trade area, and does not have among its officers or directorate persons or parties with a material interest in (or persons or parties related to any person or party with such an interest) in loans financed under Section 515 that have been prepaid. The primary purposes of the organization need not include developing or managing low-income housing or community development projects.

Rent overburden. Shelter costs (rent and anticipated utility costs) exceeding 30 percent of a tenant’s adjusted income, or the amount of payment designated by a third-party payer as shelter cost, whichever is greater.

Restrictive-use provisions. Conditions restricting the use of the property to housing for very low-, low-, and/or moderate-income tenants, whether or not the FmHA loan is in force or has been paid in full as described in §1965.209 of this subpart.

Section B. Tenant rental subsidies as provided under the Housing and Urban Development (HUD) Section 8 Housing Assistance Payment Program.

Unsubsidized conventional housing. Housing which receives no interest or project based rental subsidies, and which has no maximum income limits for its residents.

When a borrower submits a request for prepayment of the FmHA loan, the anticipated use of the project will be considered as unsubsidized conventional housing.
Sec. 1965.205 Borrower Request To Prepay

(a) Prior to initiating a formal prepayment request, borrowers considering prepaying their loans should meet with the applicable FmHA Servicing Office to discuss the prepayment request and the requirements of this procedure. The borrower will be provided with exhibit C of this subpart, to aid in completing the prepayment request package.

(b) At the meeting, the Servicing Office will inform the borrower that the project will be evaluated as unsubsidized conventional multi-family housing for the purposes of determining eligibility for incentives. An appraisal will be completed to determine if any equity exists in the project when valued as unsubsidized conventional multi-family housing. The components of the incentive offer, if any, will be dependent upon the amount of equity as follows:

(1) If the project has equity in excess of the borrower's initial investment, an equity loan and a combination of additional incentives may be considered; or

(2) If no equity exists, but it can be shown that the project can be prepaid and operated successfully in the subject market, a combination of incentives not including an equity loan will be considered; or

(3) If, based upon the Servicing Office's knowledge of the market it appears likely the project cannot be prepaid for an equity loan, the Servicing Office should so inform the borrower during the meeting. However, in no instance will the Servicing Office personnel discourage eligible borrowers from submitting a prepayment request, should the borrower so desire.

(c) Borrowers seeking to prepay MFH loans must submit a complete prepayment request to the Servicing Official at least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with §1965.215(f)(2) of this subpart). A prepayment request will not be considered complete nor will the 180-day period begin until all of the following items have been submitted:

(1) A written request to prepay the FmHA loan on a specified date;

(2) Complete and documented information necessary to prepare the prepayment report as outlined in exhibit B of this subpart and to prepare a recommendation for the FmHA Servicing Office to develop an incentive offer as outlined in exhibit C of this subpart. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;

(3) Documentation of the borrower's ability to prepay under the conditions specified in the prepayment request. Exhibit C of this subpart should be used as guidance for the documentation necessary to complete the request;

(4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;

(5) A statement from the borrower accepting restrictions or provisions in the release documents if the borrower wishes to prepay the loan subject to restrictions; and

(6) Evidence that actions required by any applicable State laws related to prepayment have been met.

Sec. 1965.206 Review of Borrower Prepayment Request by Servicing Office

The Servicing Office will determine whether the prepayment request is in conformance with §1965.205 of this subpart. Within 15 working days of receipt of a prepayment request, the Servicing Office will take the following actions:

(a) Return incomplete requests. If an incomplete request is submitted, the Servicing Official will return the request to the borrower specifying the additional information needed.

(b) Receipt of complete requests. If a complete prepayment request is submitted, the Servicing Official will:

(1) Acknowledge the request. Send an acknowledgment letter to the borrower specifying the date of the complete request and informing the borrower that prepayment commitments should not be finalized until FmHA issues a letter of approval.

(2) Notify current tenants. Notify each tenant household by Certified Mail, Return Receipt Requested, of the receipt of the prepayment request and prepare notices for the borrower to post in public areas of the project. The notices are to remain posted until a final determination is made on the prepayment request or the prepayment offer is withdrawn. The Servicing Official will not wait to determine if submitted information is accurate or if the prepayment will be accepted or declined before notifying the tenants. FmHA Guide Letter 1965-E-2 (available in any FmHA office) may be used as a guide. The following issues are to be addressed in the letter:

(i) The borrower proposes to prepay the FmHA loan and remove the housing from the FmHA program if all prepayment requirements imposed by FmHA are met;

(ii) FmHA's preliminary determination that the borrower's request to prepay will not be approved;

(iii) The likely effect of the prepayment on tenants living at the project. Include:

(A) The level at which rents at the project are projected to be set if prepayment is accepted;

(B) Restrictive-use provisions the borrower has agreed to maintain and the term of the restrictions;

(C) Whether Section 8 or State or local subsidy will remain with the project; and

(D) Whether the borrower has the option to terminate Section 8 assistance at the next renewal period (opt-out), and if so, when.

(iv) FmHA must make a determination as to whether tenants would be displaced due to increased rents, and whether there is alternative housing available in the community that is comparable in quality, size, location and rent structure before deciding, to accept the prepayment;

(v) Conditions under which prepayment will be accepted;

(vi) A 30-day tenant comment period will be available for tenants to present comments concerning the proposed prepayment. Tenants will be allowed to review the information used by FmHA to make the determinations regarding prepayment;

(vii) Tenants will be given immediate priority for other federally-financed housing if there will be any displacement;

(viii) Tenants will be kept apprised of all decisions reached regarding acceptance of the prepayment and action dates;

(ix) Tenants will be given the opportunity to submit evidence at any appeal hearing the borrower may request;

(x) If prepayment is accepted, tenants choosing to stay in their units and pay the higher rents, with or without Federal, State, or other subsidy, are entitled to do so, unless evicted for cause unrelated to prepayment; and

(x) Any other information relevant to the case.

(3) Notify National Office. The Servicing Office is to notify the FmHA State Office, who will notify the Assistant Administrator, Housing, FmHA National Office, in writing using the format of FmHA Guide Letter 1965-E-1 (available in any FmHA office). National Office notification must be sent by the State Office within 20 working days of the receipt of a complete request by the Servicing Office.

(4) Notify other agencies. The FmHA State and Servicing Offices, as appropriate, will notify other agencies of the borrower's intent to prepay the FmHA loan. The agencies contracted will include nonprofit organizations; local, State, and Federal agencies; and public organizations who have expressed an interest in purchasing a project and who provide housing assistance to low- and moderate-income people. The interest list, compiled in accordance with §1965.203 of this subpart, is to be used in notifying organizations of the borrower's intent to prepay. Letters sent to the agencies will inform the organizations of the offer to prepay, the extent of any anticipated displacement, and the possibility of transfer with incentives or sale to a nonprofit organization or public agency. Organizations contacted will be advised that an offer to sell may be forthcoming. Generally, the FmHA State Office will notify State and Federal agencies and the appropriate Servicing Office will notify local agencies.

(5) New tenant notification. (i) The borrower will be required to submit for approval proposed language to be used as an addendum to leases for all tenants moving into the project while the prepayment request is pending. The language will specify the effect of the prepayment on the tenants if prepayment is accepted. The recommended language to be included in the leases is as follows:

"The mortgage on this project may be repaid to the Federal Government on or after
Sec. 1965.207 Prohibition on Prepayment for Loans Made on or After December 15, 1989, To Build or Acquire New Units.

Loans made on or after December 15, 1989, to build or acquire new RH units may not be prepaid for the life of the loan, even if the borrower is willing to sign restrictions agreeing to operate the project for low- and moderate-income people after prepayment. The prohibition and conditions for use are described in Subpart E of Part 1944 of this chapter.

Sec. 1965.208 Restrictive-Use Provisions Related to LH Projects With Grants

For LH projects with any size grant, no incentive will be offered since the grant agreement obligates the borrower to operate the housing for its intended use for a 50-year period.

Sec. 1965.209 Restrictive-Use Provisions After Prepayment

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases, the new or increased rent overburden. Restrictive-use provisions apply to all loans approved between December 21, 1979, and December 14, 1989, all subsequent loans approved on or after December 15, 1989, and those loans approved prior to December 21, 1979, subsequently made subject to restrictive-use provisions as a result of:

(1) A servicing action;

(2) Acceptance of prepayment incentives; or

(3) Restrictions accepted as a condition of prepayment as specified in this subpart and Exhibits A–1 through A–4 of this subpart.

(b) The restrictions mandate that conditions of occupancy, rent, and charges other than rent be maintained so that the housing will continue to be affordable to the protected population of tenants. Priority for tenants entering the project after prepayment must continue to be for those tenants in the lowest income category of the protected population, if determined eligible for the units. Borrower responsibilities under restrictive-use provisions are discussed in greater detail in § 1965.215(e)(6) of this subpart.

Sec. 1965.210 Loans Approved Prior to December 14, 1989—FmHA Actions When Processing Prepayment Requests

For loans approved prior to December 14, 1989, that have not been subsequently accepted prepayment incentives, the Servicing Office or other designated office must evaluate the need for the housing to determine the level of incentives to be offered, and whether the prepayment may be legally accepted with or without restrictive-use provisions. A reasonable effort must be made to enter into an agreement with the borrower to maintain the housing for low-income use that takes into consideration the economic loss the borrower may suffer by foregoing prepayment. The guidance provided in §§ 1965.213 and 1965.214 and Exhibit E of this subpart will be used to determine the appropriate incentive package. Once an incentive offer has been accepted on a project, the project will be considered ineligible for future incentive offers until such time as the restrictive-use period associated with the incentive offer accepted has expired.

Sec. 1965.211 Evaluation of the Borrower’s Ability To Prepay the Loan

The borrower’s ability to prepay the loan will be evaluated in accordance with Exhibit E of this subpart. If it is determined the borrower does not have the ability to finance the prepayment, the prepayment request will be denied. The borrower will be notified of the reasons for the decision and appeal rights will be given.

Sec. 1965.212 Appraisals

To determine the appropriate incentives to offer a borrower, an appraisal must be completed. The purpose of the appraisal is to determine if the borrower’s current equity in the project exceeds the initial investment. The project will be appraised as unsubsidized conventional multi-family housing. The effect on value of any hard and soft costs of converting the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpended non-FmHA project based tenant subsidies will be valued as a cost for inclusion in the appraisal. FmHA Instruction 1922-B (available in any FmHA office) will be used for guidance in conducting multi-family housing appraisals. After receipt of the appraisal, the Servicing Official or other designated official will determine the amount of the equity loan, if any, the number of Rental Assistance (RA) units necessary, the amount of annual return on investment to be offered, and whether excess Section 8 rents may be released to the borrower, if applicable.

Sec. 1965.213 Offer of Incentives to Borrowers

The Servicing Official must offer an incentive package to the borrower as an inducement to not prepay if the borrower’s loan(s) is not subject to prohibitions on prepayment or the borrower has not previously accepted incentive offers on the project for which the associated restrictive-use period has not expired. If a prepayment incentive offer which includes an equity loan is accepted, the equity loan may be processed and consolidated with the current borrower or any eligible transferee.

(a) Available Incentives. One or more of the following incentives will be offered to the borrower. The amount of incentives will be determined in accordance with Exhibits D and E of this subpart:

(1) Equity loans. In RH projects, a subsequent loan may be offered for equity for the difference between the current unpaid loan balance and a maximum of 90 percent of the project’s value appraised as unsubsidized conventional housing. For LH loans, no authority exists to provide equity loans as an incentive.

(2) Rental assistance. Additional RA will be offered if needed by current tenants if found necessary by a market determination of need. The number of RA units offered will be based upon:

(i) The increase in rent overburden that will be experienced by tenants, in the project as a result of the incentives offered. The Multiple Housing Tenant File System (MTFS) will be reviewed to determine the number of tenants that will be rent overburdened by the increase in rents resulting from any subsequent loan made for equity. The number of RA units offered will be equal to the number of tenants experiencing rent overburden; and/or

(ii) A change in the market increasing the need for affordable housing. This criteria will usually be used when the project is experiencing substantial vacancies due to market factors. Generally, if the incentive offer contains a substantial equity loan, it would be unlikely that this provision would be consistent with the determination that the project is located in a strong unsubsidized market.

(3) Increase the maximum annual return on investment.

Borrower equity. The borrower’s equity in the project may be increased. The new equity is the difference between the value of the project appraised as unsubsidized conventional housing in conjunction with the incentive loan (if offered) and the unpaid balances of all loans against the project, including the incentive loan. If a new appraisal is made, equity will be determined by subtracting the outstanding balances of all loans against the project from the value shown in the most recent FmHA appraisal completed for the project prior to receipt of the prepayment request.

(b) Rate of return. Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package that include an increased rate of return. The rate to be offered will be the greater of the borrower’s current rate established in the initial loan, or 2 percent above the 30-year Treasury Bond rate, rounded to the nearest 1/4 percent. The appropriate Treasury Bond rate will be
determined from newspapers or available financial publications and will be the rate published for the first day of the month following receipt of the complete prepayment request. The rate of return for borrowers receiving equity loans will remain at the rate currently specified in paragraph XIII B.2 of exhibit B of subpart C of part 1930 of this chapter.

(4) Excess Section 8 rents. For projects with project-based Section 8 rents, the owner may be permitted to receive rents considered in excess of the amounts needed to meet annual project operating and maintenance, debt service, and reserve expenses. In conjunction with the acceptance of excess Section 8 rents as an incentive, the reserve account will be adjusted to reflect adequate funding for long-term repair, replacement and maintenance costs.

(5) Conversion or modification of interest credit. Convert full profit loans to limited profit loans for the purpose of substituting interest subsidy for loans with Section 8 assistance to make contract rents more financially feasible. The conversion would be accomplished by changing the designation of the project to Plan II.

(b) Development of incentive package.

(1) Borrowers requesting immediate conversion from low and moderate-income use. The required borrower information and criteria to be used in determining the incentive to offer, along with the steps to develop the incentive offer, are listed in Exhibits D and E of this subpart.

(2) Projects committed to low- and moderate-income use after prepayment by parties other than FmHA. In accordance with Exhibits D and E of this subpart, incentives will be reduced in proportion to the length of time a project is committed to low- and moderate-income use after prepayment through requirements of parties other than FmHA. The interest for extended use may be voluntary or required by legal restrictions on use. The effect on the value of the project will be taken into consideration during the appraisal process.

(3) Adjustment of project reserve accounts. The reserve account must be maintained in conformance with the requirements of paragraph XIII B.2c of exhibit B of subpart C of part 1930 of this chapter. At the time an incentive offer is developed, the maximum reserve amount should be adjusted to include the costs of any deferred maintenance items or expected long-term repair or replacement costs of the project.

(c) Letter offering incentives to borrowers. Within 20 days of the end of the tenant comment period, a letter offering incentives will be sent to borrowers outlining the elements of the incentive offer developed in accordance with this section and Exhibits D and E of this subpart. The letter will include the following:

(1) A statement that the package is a one-time incentive being offered in return for the extension of the low and moderate income use of the housing. The letter will establish that, by accepting the incentives outlined in the letter, the borrower will be subject to a restrictive-use provision obligating the housing to low- and moderate-income use in the FmHA program for 20 years from the date the extended use agreement is executed, and prohibited from future incentive offers on the project so long as the restrictive-use provisions remain in effect.

(2) The amount of the equity loan being offered (if any). Any offer of an equity loan will include a statement that the borrower is subject to:

(i) A continued eligibility determination in accordance with Subpart E of Part 1944 of this chapter; and,

(ii) Appropriation limitations. When an incentive offer that includes an equity loan is accepted by a borrower, funding the components of the offer is considered binding on FmHA. If funds are not immediately available to fund an incentive loan, the amount of the offer will be included on a funding waiting list maintained by the National Office. Priority for funding is based on the date of receipt of the original complete prepayment request, as specified in §1965.205 of this subpart.

(3) The number of existing equity loans that may be made contingent on any increased return on investment offered.

(4) The number of RA units that will be provided to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(5) Interest credit or additional interest credit if needed to protect existing tenants from rent overburden due to other incentives that may increase rental rates in the project.

(6) The offer of borrower receipt of excess project-based Section 8 rents, if applicable.

(7) The offer must be accepted or rejected in writing within 30 days, or the prepayment request will be voided.

(8) Appropriation limitations may restrict available incentives each year. The actual receipt of the preceding incentives may not be forthcoming in the near future. However, the offer is binding on FmHA. Acceptance of the incentive offer by the borrower will cause the request to be maintained on the waiting list for funding until obligated.

Sec. 1965.214 Offering and Processing of Incentives

(a) Borrower does not respond to incentive offer. If the borrower does not respond to the incentive offer within 30 calendar days of the date of the letter offering incentives, the State Office will advise the National Office by means of FmHA Guide Letter 1965-E-1 (available in any FmHA office) to remove the name from the waiting list. Tenants and any agencies notified in accordance with §1965.206(b) of this subpart will be notified by the Servicing Office that the borrower has ceased to pursue the prepayment request and prepayment will not take place.

(b) Borrower rejects the incentive offer. If the borrower rejects the incentive offer within 30 calendar days, a determination of the continued need for the housing as subsidized housing will be made in accordance with §1965.215(b) and Exhibit E of this subpart. A determination that the borrower has rejected the incentive offer and that a decision will be made by FmHA whether to accept the prepayment. The tenants will be informed of the factors used in making the decision.

(c) Borrower indicates acceptance of the incentive package. If the borrower indicates a willingness to accept an incentive package which includes an equity loan, a complete loan application for the initial loan exhibit A-11 of subpart B of Part 1944 of this chapter will be required. If an appraisal of the property has not been completed as required in §1965.212 of this subpart, one will be made at this time in accordance with FmHA Instruction 1922-B (available in any FmHA office). The Servicing Official will determine the feasibility of the loan, including any needed reamortization of existing loans. No equity loan is to be made without sufficient RA to protect current tenants against new or increased rent overburden.

(d) Application for transfer with incentives. If a transfer is to take place simultaneously with the incentive, a complete transfer application package, in accordance with §1965.65 of Subpart B of Part 1965 of this chapter, will be submitted. A completed application for an equity loan, if applicable, will be completed and submitted in accordance with paragraph (c). The determination of borrower eligibility, evaluation of the transfer and any equity loan will be made concurrently. If a proposed transfer is determined not to be eligible for this transfer and assumption, appeal rights concerning transferee eligibility will be provided to the proposed transferee. If the FmHA decision is upheld, the borrower will be given an additional 15 days to reconsider whether to accept the original incentive offer.

(e) Notification that incentives are ready for funding. When the borrower indicates that the final incentive offer is acceptable, and the processing of the incentive application is complete, the Servicing Official will notify the State Office, which in turn will notify the National Office of all required information through use of FmHA Guide Letter 1965-E-1 (available in any FmHA office).

(1) All interested agencies contacted in accordance with §1965.206(b) of this subpart and tenants will be advised that prepayment of the loan will not take place. If the ownership is to be transferred, tenants will be so advised. Any rent increases resulting from acceptance of an incentive offer will be processed in accordance with §1965.204(b) of this subpart.

(2) The National Office will issue authorizations to obligate incentives to the extent possible, depending upon the availability of loan funds. These authorizations will be issued in the order in which complete prepayment requests were received as set forth in §1965.205 of this subpart. To fully utilize all available prepayment incentive loan funds and RA, projects with fully processed(c) of this package may be authorized prior to authorizing packages with earlier receipt dates for which incentives have not been fully processed. Any other required National Office authorizations will be given at the same time.

(f) Processing the incentives. When authorization to proceed is received, the Servicing Office will process the incentives,
with or without a transfer and make the following amendments to the loan and RA agreements with the assistance of the Office of the General Counsel (OGC), as appropriate. (Because a transfer is to be processed at the time the incentive is processed, all obligations will be made to the transferee.)

(1) If the annual return on investment is increased, a statement will be added to the loan agreement specifying that, "The maximum annual return on investment is being increased by $________ for a total maximum annual return of $________."

(2) In a conversion of profit type is made, the procedures of paragraph IV A 2 e of exhibit B of subpart C of part 1930 of this chapter will be followed. If the interest subsidy is increased, a new Form FmHA 1944-4, "Multiple Family Housing Interest Credit and Rental Assistance Agreement," will be executed.

(3) Any change in the amount of RA will require the execution of a new RA agreement or a change in the existing RA agreement, as described in Exhibit V C of exhibit E of subpart C of part 1930 of this chapter.

(4) Loans for equity will be made in accordance with subpart E of part 1944 of this chapter. In accordance with §§ 1951.517(b)(1) of subpart K of part 1951 of this chapter, the equity loan will be established as a Predetermined Amortization Schedule System (PASS) loan and all existing loans on the project will be converted to PASS. All assumptions and transfers will be processed in accordance with § 1965.65 of subpart B of this part. All existing project loans may be consolidated and reamortized in accordance with §§ 1965.65 and 1965.70 of subpart B of this part, unless consolidation is not necessary to maintain feasibility of the project for the current tenants or reduce the level of monthly rental subsidies. All delinquent loans must be brought current, cost items paid in full, default operating and reserve accounts brought current. All project operating and reserve accounts will remain at authorized levels during and after the closing of the incentive package, regardless of whether a transfer was included as part of the prepayment. All taxes, assessments and other liens must be prorated, brought current or paid in full as appropriate. Deferred maintenance identified in previous inspections must be performed before any equity may be received by the borrower or transferor, as applicable.

(g) Restrictive-use provisions. The restrictive-use provisions contained in exhibit A-1 of this subpart will be inserted in all security instruments, loan agreement/resolution, assumption agreement, and/or reorganization agreement, as appropriate with the advice of OGC.

Sec. 1965.215 Borrower Rejection of Incentive Offer—Approving/Disapproving Prepayment

(a) Approving or disapproving prepayment. If the borrower rejects the incentive offer and indicates that the project is to prepay, prepayment may be approved in accordance with paragraph (d) of this section within 180 days of the decision that the prepayment can be accepted if the determinations required in paragraph (c) of this section can be made.

(b) Determining the need for housing. The owner will execute the applicable Restrictive-Use Agreement found at Exhibit G-2 or G-3 of this subpart, and agrees to execute theRestrictive-Use Agreement found at Exhibit G-4 of this subpart.

(c) Determining the need for housing. Maintain the housing for current eligible tenants in occupancy as of the date of the prepayment for the life of the project or until the current tenants are no longer eligible for the housing under FmHA regulations, or the tenants choose to vacate of their own will. The owner will ensure the tenants will not be displaced due to a change in the use of the housing, an increase in the rental or other charges as a result of the prepayment, or a decrease in the amount of Federal or other financial assistance provided to residents. If a loan subject to restrictive-use provisions or prohibition on prepayment, and there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions. The provisions of paragraphs (c)(3) of this section will apply.

(1) The loan is subject to restrictive-use provisions and the borrower agrees to continue to adhere to the provisions after prepayment. In accordance with Exhibit A-3 of this subpart, the borrower agrees to continue to maintain the housing in accordance with the restrictions already in effect. The borrower must also agree to execute the Restrictive-Use Agreement found at Exhibit G-1 to this Subpart.

(iii) If the servicing office determines that housing opportunities for minorities will not be materially affected as a result of prepayment, and that there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions.

(iv) The Servicing Office determined that housing opportunities for minorities will not be materially affected as a result of prepayment, and that there is an adequate supply of safe, decent, and affordable rental housing within the market area for the foreseeable future, the borrower may prepay without restrictions.
determination is made by FmHA that there is no longer a need for the housing (in accordance with exhibit E of this subpart).

(4) Projects with both LH loans and grants. If a prepayment is accepted on an LH loan for a project with both LH loans and restrictive-use provisions for the project may be released only under the conditions specified in the Grant Agreement.

(5) Documentation. Thorough documentation of the reasons and decision to approve prepayment will be entered in the casfile and appended to the prepayment report. Any additional materials used to reach the decision will be included in the casfile.

(d) Borrower notification of approval or disapproval of prepayment. The Servicing Office or other designated office will notify the borrower as to whether the prepayment has been approved or disapproved within:

(1) 15 days of the borrower’s rejection of an incentive offer for loans not subject to restrictive-use provisions nor prohibited from prepayment; or

(2) 60 days of a complete prepayment request by a borrower subject to restrictive-use provisions.

(e) Processing acceptance of prepayment. After approval of the prepayment, the following actions must be taken:

(1) Completion of the prepayment report and notification of the National Office. If prepayment is approved, the Servicing Office or other designated office will complete a prepayment report in the format of exhibit B of this subpart, and submit the report with all documentation on each prepaid loan to the State Director or other designated official for indefinite retention. Any information for the report supplied by the borrower must include documentation and verification by the Servicing Office. For prepayment of off-farm housing units, only items related to the prepayment need be included. The State Office will notify the National Office in the format of FmHA Guide Letter 1965-E-1 (available in any FmHA office) indicating that the prepayment has been accepted. A copy of the prepayment report will be included in the materials forwarded to the National Office.

(2) Notify interested agencies. All interested agencies notified in accordance with § 1965.206(b)(4) of this subpart will be notified of the decision to accept the prepayment. Agencies which may aid displaced tenants will be advised of any anticipated displacement, the level at which post-prepayment rents will be set and any restrictive-use provisions which will remain in the project on completion. Other agencies will be advised that no offer to sell will be made.

(3) Notify tenants. The Servicing Office will send an additional notice to tenants at least 60 days prior to the prepayment. The prepayment may not take place less than 60 days from the tenant notification or 160 days from the initial notification unless an exception is allowed in accordance with paragraph (f)(2) of this section. Tenant notices will be sent CERTIFIED MAIL to each tenant and all displaced at the project in public areas. Copies of the notice will remain posted at the project until the prepayment is accepted and all existing tenants voluntarily vacate their units. The notice and attachments will contain all of the following information appropriate for the prepayment action and any other relevant information necessary to allow tenants to make informed choices (FmHA Guide Letter 1965-E-3 available in any FmHA office) and attachments are provided as a guide for this purpose). The notice will contain the following applicable statements and information:

(i) All relevant information concerning the prepayment has been reviewed and FmHA has decided to accept the prepayment on (date).

(ii) Fully detailed reason(s) describing why the prepayment was approved. Also include the reasons for acceptance of the prepayment in less than 180 days (if applicable).

(iii) At the time or prepayment, rents are expected to be $ .

(iv) The tenant will be affected by this change on (date the tenant’s current lease expires, date of the prepayment, or other mandated date, whichever is later).

(v) The following statement should be included if the loan is being prepaid but will retain certain protections (provisions which expire, mandatorily, or before the prepayment occurs), whichever is sooner. The rents of current eligible tenants may not be increased as a result of current owner actions to exceed levels which create new or increased rent overburden as established by FmHA regulations, in accordance with Title V of the Housing Act of 1949, during the period of eligible tenant occupancy during the restricted period. However, declines in tenant income shall not require corresponding reductions in rent levels. A tenant, after the prepayment, wishing to occupy the housing (if applicable), as well as the Government, may seek enforcement of the provisions. Annual income recertifications will continue to be required in order to protect the high income tenants. The current income recertification requirements are binding on the current owner and any successors in interest.

(vi) The following statement should be included if the project has project-based Section 8 rents. Eligible tenant rents will continue to be subsidized by the Department of Housing and Urban Development (HUD) until (insert the date the Section 8 contract expires). (If applicable, include the following) If Section 8 subsidies are not continued after (insert the date the Section 8 contract expires), the terms of the project will continue to eligible tenant rents at levels that will not create or increase rent overburden until (insert date the restrictive-use period expires). However, declines in tenant income shall continue to result in corresponding reductions in rent levels.

(vii) The following statement should be included if project-based HUD Section 8 or other subsidies will expire prior to 2 years after the prepayment. Eligible tenants currently residing in the project who may subsequently be displaced or experience rent overburden due to the prepayment may qualify for certain protections. The following protections are available to eligible tenants who believe they have experienced displacement or rent overburden:

(A) Letters of Priority Entitlement (LOPE) to other FmHA housing. Tenants may apply for LOPEs up until the day the tenants’ rents are scheduled to be increased. These letters will be valid for 60 days after issuance. All LOPEs will be issued in accordance with Title VI of the Civil Rights Act of 1964, as codified in Subpart E of Part 1901 of this chapter.

(B) Tenants currently receiving rental assistance (RA) will be able to continue to receive RA if they move to other FmHA financed housing in which they are eligible for RA.

(C) Tenants choosing to stay in their units after prepayment and pay higher rents, with or without Federal, State or other subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(viii) Eligible tenants residing in prepaying projects will also be sent:

(A) A list of project names, locations, number of apartments, senior citizen or family designation, and other information on all other FmHA projects in the market area.

(B) The names and locations of other subsidized housing; and

(C) Addresses and telephone numbers of the applicable HUD area office, and other agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(ix) Tenants will be allowed to review the information used to make any of the determinations regarding acceptance of the prepayment, prepayment rent increases and alternatives to prepayment.

(4) Issue LOPEs. Upon request by a tenant for an LOPE, the Servicing Office will prepare the letter and forward the letter to the tenant (FmHA Guide Letter 1965-E-4 available in any FmHA office) may be used as a guide). The LOPE, which is to be addressed to FmHA borrowers, will include:

(i) A tenant with an LOPE has 60 days to apply in writing to other FmHA projects in accordance with the regulations which administer housing subsidies or aid in relocation anywhere in the market area.

(ii) A tenant with an LOPE is to be placed at the top of all waiting lists in FmHA projects applied to, which have appropriate units the tenant qualifies for. Such tenants will follow only those tenants with LOPEs who were previously placed on the waiting list. Handicapped tenants on the list for handicapped units which have appropriate design features will maintain priority over non-handicapped tenants with LOPEs.

The tenant will not be removed from the priority position on the waiting list until the tenant moves to a unit utilizing an LOPE or is purged from the waiting list in accordance with Exhibit B of Subpart C of Part 1930 of this chapter.

If the tenant choosing the LOPE is receiving RA in the prepaying project, and uses the LOPE to move to a Plan II project for which the tenant would qualify for RA, the RA will be transferred to the project to which the tenant moves. The RA will be assigned to that tenant without competition. RA brought to a project by a tenant from a prepaying project will remain at the receiving project if the tenant...
subsequently moves to another FmHA project.
(v) If the tenant's current security deposit of a specified amount has not been released by the prepaying project by the date a tenant must vacate, the landlord will be encouraged to defer collection of the new security deposit until the tenant's current deposit is refunded, even if the date of release is after the date the tenant occupies the new unit.
(5) Approval of tenant leases. Prior to accepting the prepayment, the Servicing Office will also review and approve a modified tenant lease to be used for all protected tenants during any applicable restrictive-use period. This lease will explain the restrictive-use provisions, who is protected, and the limits on rents during the period of restrictions. The lease shall remain in effect during the restrictive-use period. Advertising the project to the public will be required if the project is to be sold to a nonprofit organization or public housing authorities.

### Borrower Responsibilities after Prepayment
Prior to accepting the prepayment, the Servicing Official will meet with the borrower to discuss borrower responsibilities under restrictive-use and fair housing provisions remaining in effect after the prepayment is accepted. The Servicing Official will review the applicable restrictive-use requirements, if any, with the borrower. In particular, the Servicing Official will explain the applicable provisions of Subpart C of Part 1930 of this chapter specific to tenant rights and relations shall remain in effect during the restrictive-use period. Owners of prepaid projects will be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in Subpart C of Part 1930 of this chapter and also adheres to applicable local, State, and Federal laws. The borrower will be informed that it is the borrower's responsibility to obtain FmHA concurrence with any changes to the prepayment prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including other certifications, shall be maintained to evidence compliance in the event there is a future audit.

The Servicing Office will send a notice to all tenants informing the tenants of the acceptance of the prepayment. The borrower shall be notified that a copy of the notice must be posted and maintained in public areas in the project until all restrictive-use provisions expire. FmHA Guide Letter 1965-E-5 (available in any FmHA office) will be used for the notice. The Servicing Office or other designated office will monitor receipt of the certification referred to in paragraph (e)(6) of this section and maintain case files on the prepaid project until such time as the restrictive-use provisions expire. The Servicing Office or other designated office will take such steps as necessary to follow-up receipt of the annual certifications from each prepaid borrower. If the Servicing Office is unable to obtain borrower cooperation, the Servicing Office shall refer the case to the State Office for transmittal to the National Office for further servicing guidance and/or enforcement actions.

### Payment in Full and Release of Security
Prior to releasing security instruments, FmHA must be certain that full payment has been received. Security instruments will be released in accordance with §1965.300(b) of Subpart B of Part 1965 of this chapter.

### Sale to Nonprofit Organization or Public Agency at End of Restrictive-Use Period
Borrowers who are subject to the restrictive-use provisions contained in paragraph (A) or (B) of Exhibit A-4 of this subpart are required to attempt to sell the project to a nonprofit organization or public agency at the end of the restrictive-use period. Advertising the project for sale will be carried out in the same manner as required for sale to nonprofits or public agencies within the program as stated in §1965.216 (b), (c), and (d) of this subpart. Advertising will be conducted for a minimum of 180 days beginning at least 6 months prior to the expiration of the restrictive-use period. If 6 months do not remain between the date of prepayment and the end of the restrictive-use period, the project will be advertised for sale for a minimum of 180 days.

(1) Denial, postponement, waiver, or withdrawal of prepayment request.

(1) Denial of prepayment request.
Borrowers for whom there is no prohibition on prepayment will be denied to prepay if the conditions required for prepayment stated in paragraphs (a)(3) of this section and Exhibit B of this subpart cannot be met, or if information submitted with the prepayment request cannot be verified. If the borrower is denied a request to prepay, the Servicing Official will send a letter to the borrower stating the reasons for the denial and the right to appeal the denial, in accordance with subpart B of Part 1900 of this chapter and §§1965.213 and 1965.215 and Exhibits B and D of this subpart. The letter denying the prepayment request may revise the original incentive offer if new information documenting the loss the borrower may experience if the prepayment has been brought to the attention of the Servicing Office. If a letter is sent offering a revised incentive, rights to appeal the denial will not be included.

(2) Postponement of prepayment requests.
Prepayment requests will be denied if the request was received less than 180 days in advance of the projected prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant rights and relations as outlined in the prepayment report, and verify that all tenant leases are extended for a 180-day period from the date of the prepayment request and include current rents and conditions. Prepayment will be postponed if necessary to provide sufficient time for the second tenant notification to be sent at least 60 days prior to the prepayment, unless all tenant leases are extended to the end of the 60 days, and at least 30 days has passed since the first tenant notification was sent. The extension of tenant leases does not substitute for the insertion of restrictive-use provisions in the release documents or for allowing sufficient time for tenant comments.

(3) Withdrawal or Cancellation of Prepayment Requests.
Prepayment authorization will be cancelled if the prepayment is not received within 180 days of the final approval of the prepayment.

(4) Borrower Appeals of Prepayment Disapproval.
The borrower may appeal the decision to deny prepayment without the restrictive-use provisions contained in paragraph (A) of Exhibit A-4 of this subpart are required to attempt to sell the project to a nonprofit organization or public agency at the end of the restrictive-use period. Advertising the project for sale will be carried out in the same manner as required for sale to nonprofits or public agencies within the program as stated in §1965.216 (b), (c), and (d) of this subpart. Advertising will be conducted for a minimum of 180 days beginning at least 6 months prior to the expiration of the restrictive-use period. If 6 months do not remain between the date of prepayment and the end of the restrictive-use period, the project will be advertised for sale for a minimum of 180 days.
Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

**Sec. 1965.216** Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is appropriate sections of this subpart. If no consent can be reached under § 1965.215 and Exhibits A-2 to A-4, borrower is no longer need remains for the housing, the borrower will be required to offer to sell the project to a nonprofit organization or public agency. The following steps will be taken:

(a) Determination of fair market value. Within 60 days of the termination of any appeal or the decision to deny prepayment if no appeal was requested, the fair market value of the project as unsubsidized conventional housing will be determined. The fair market value will be obtained from two appraisals. One appraisal will be the appraisal contracted and paid for by FmHA that was used to establish the incentives previously offered. The second appraisal will be obtained and paid for by the borrower. Both appraisals will be conducted by qualified independent appraisers in accordance with FmHA Instruction 1992-B (available in any FmHA office). If the fair market values arrived at are within 10 percent of each other, the Servicing Office and the borrower will negotiate to arrive at a mutually acceptable value. If the values differ by more than 10 percent, the independent appraisers will be asked to review their appraisals to determine if the values can be reconciled to within 10 percent. If FmHA and the borrower are unable to negotiate a mutually acceptable value or the appraisers are unable to reconcile their appraisals within 30 days of the completion of the appraisals, the State Office and the borrower will jointly select a third independent qualified appraiser whose appraisal will be binding on FmHA and the borrower. The third appraisal will be completed within 60 days of selection of the appraiser. The cost of the third appraisal shall be divided evenly between FmHA and the borrower.

(b) Efforts to market and sell the project to nonprofit organizations or public agencies. Once the fair market value of the project has been established, the borrower is to attempt to market the project to nonprofit organizations and public agencies. The following actions are to take place:

(1) The Servicing Official is to provide the borrower with a list of nonprofit organizations and public agencies which have notified FmHA of their interest in purchasing projects that are attempting to prepay. The list will include nonprofit organizations and public agencies that have notified FmHA of interest, and National Offices of their interest.

(2) The Servicing Official will instruct the borrower to contact each nonprofit organization and public agency on the list within 10 days of establishing project fair market value. The sequence of contacting nonprofit organizations and public agencies is set forth in paragraphs (b)(3)(i) and (ii) of this section. Materials notifying nonprofit organizations and public agencies of the project’s availability will include sufficient information regarding the project and its operation for interested purchasers to make an informed decision. If an interested purchaser requests additional information concerning the project, the borrower shall promptly provide the requested materials.

(3) The borrower must advertise and offer to sell the project for a minimum of 180 days. During the 180 days, the borrower shall advertise and other sales efforts while eligibility of an interested purchaser is determined. However, if the purchaser is determined to be ineligible, the borrower must resume advertising until a minimum of 180 days has passed. The borrower may satisfy the 180-day requirement by continuing advertising and sales efforts during the eligibility review of an interested purchaser. If additional offers are received during this period, the offers will be reserved as back-up offers until the eligibility determination of the initial purchaser is completed.

(i) Sales preference to local nonprofit organizations or public agencies. The borrower will first advertise the project for sale to qualified local nonprofit organizations or public agencies as defined in § 1965.202 of this subpart. The Servicing Official will be responsible for determining that all appropriate means for contacting such organizations have been utilized including local media, and all necessary information provided. Exclusive advertising to local nonprofit organizations and public agencies must continue for a minimum of 60 days. If more than one qualified nonprofit corporation or public agency submits an offer to purchase the project, a local nonprofit organization or public agency must be given preference over a regional or nationwide organization. The order of offers of whom offers to purchase are received.

(ii) Advertising to regional or nationwide organizations. If no qualified local nonprofit organization or public agency is found to purchase the housing within the first 60 days, the Servicing Official will authorize the borrower to advertise for an existing qualified national or regional nonprofit organization to purchase the housing. Advertising must begin between 60 and 120 days after advertising to local organizations began. Advertisements will be placed, as appropriate, in national housing publications and other media determined appropriate by the State Office or other designated office, including those serving minority groups exclusively.

(c) Qualifications of nonprofit borrower to purchase. Notwithstanding the requirements of § 1944.211(a)(10) of Subpart B of Part 1944 of this chapter, nonprofit organizations for the purpose of this paragraph need not be broadly-based (unless qualifying as a local nonprofit organization as defined in § 1965.202 of this subpart) nor organized solely to provide housing. Nonprofit organizations determined qualified to buy the housing through this procedure must:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by self management or through a management agent.

(2) Agree that no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the Secretary or designee determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities.

Generally, transfers between qualified nonprofit organizations and/or public agencies will be acceptable. However, under no condition will a transfer be approved to an entity in which the nonprofit transferee or a member of the nonprofit entity holds an ownership interest.

(3) Agree to obligate itself and successors in interest to maintain the housing for very low¬ and low-income families or persons for the remaining useful life of the housing and related facilities, although no currently eligible moderate-income tenants will be required to move. The provision in Exhibit A-2 of this subpart will be used and inserted in the deed, security instrument, loan agreement/resolution and/or assumption agreement, as appropriate.

(4) Show financial feasibility of the project including anticipated funding to be authorized in accordance with § 1965.217(d) of this subpart. Financial feasibility may also include any regular RA or debt forgiveness RA allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

(5) Have no identity of ownership or controlling interest, regardless of degree, except as management agent between:

(i) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such interest) in loans financed under Section 515 that have been prepaid; and

(ii) Officers or directorate persons or parties with a material interest (or persons or parties related to any person or party with such an interest) in the purchasing entity.

(6) Evidence compliance with paragraph (c)(5) of this section. An officer legally authorized to execute documents on behalf of the purchasing nonprofit entity shall execute the following statement: “(Name of purchasing nonprofit entity) certifies that no officer or directorate of (name of purchasing nonprofit entity) has been a party or party with a material interest (or persons or parties related to any person or party with such interest) in any loans financed under Section 515 that have been prepaid.”

(d) Priority between nonprofit organizations and public agencies. If more than one qualified organization or public agency submits an offer to purchase the project, the following criteria, in descending order of importance, will be used to establish priority among nonprofit organizations and public agencies:

(1) Local nonprofit organizations and public agencies have priority over regional and national nonprofit organizations and public agencies;

(2) Nonprofit organizations and public agencies with the most successful experience...
in developing and managing subsidized housing; and
(3) Nonprofit organizations and public agencies with the longest experience in developing and managing subsidized housing.

Sec. 1965.217 Processing applications for transfers to nonprofit corporations or public agencies

(a) Determining eligibility. After an option to purchase is signed between a borrower and a nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with § 1965.55 of subpart B of this part. FmHA will make a determination of the eligibility of the borrower and feasibility of the proposed transfer and subsequent loan. Consolidation and remortization of the loans will be considered when a transfer takes place.

(b) Appeal rights when a purchaser is not selected. If a nonprofit organization or public agency is not accepted by FmHA to purchase the project because the purchaser is found to be ineligible, the transfar is found to be not feasible, or because the organization has a lower priority than another applicant in accordance with § 1965.216 (b), (c), or (d) of this subpart, appeal rights will be given to the applicant in accordance with Subpart B of Part 1940 of this chapter.

(c) Authorization for transfer. When the transfer and loan(s) are ready to be obligated, the National Office will be notified in the format of FmHA Guide Letter 1965–E–1 (available in any FmHA office). If the loan will be approved by the State Director's approval authority, the entire case file shall be sent to the National Office for review. The National Office will give approval authority and authorize funding for purchase of projects which have complied with the provisions outlined in this section. Subject to the nationwide maximum funding allowed, the authorizations will be issued in date order the complete prepayment request was received by the Servicing Office. (d) Loans and grants available to nonprofit organizations and public agencies. Loans and grants are available to nonprofit organizations and public agencies to purchase and assist in the purchase of prepaying projects and to pay first year operating expenses. Loans to nonprofit organizations and public agencies may not exceed 90 percent of the fair market value of the project. Grants for costs related to purchasing a project may not exceed $10,000.

(1) Loans to nonprofit organizations and public agencies. Loans to nonprofit organizations or public agencies will be approved in accordance with subpart E of part 1944 of this chapter for the following purposes:

(i) A loan sufficient to enable the nonprofit organization or public agency to purchase a project at the fair market value;

(ii) With proper justification, first year operating expenses not to exceed 2 percent of the project's appraised fair market value if current operating funds are not sufficient.

(2) Special advances to nonprofit organizations or public agencies to cover costs related to purchasing a project. A grant may be made to a nonprofit organization or public agency to cover any direct costs, other than the purchase price, incurred by the organization or agency in purchasing and assuming responsibility for a project and related facilities. If less than $10,000 of the grant funds, the organization or agency must be able to obtain an accepted purchase offer for a project offered for sale by a borrower under § 1965.216 of this subpart.

(i) Grant purposes. Eligible purposes of the grant include:

(A) Direct costs to the organization or agency that are based on written estimates for legal fees for purchasing the project, architectural or engineering services, and/or other expenses as described in § 1944.222 of subpart E of part 1944 of this chapter and as authorized by the State Director. Legal fees for organizing the entity are not an eligible cost;

(B) Fees, for technical assistance received from a nonprofit organization, with housing and/or community development experience, to assist the organization or agency in the packaging of the loan document and project as well as legal, accountancy, and other professional fees incurred. Legal fees for organizing the entity are not an eligible cost. FmHA will allow payments to eligible organizations packaging applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract. The packaging organization may not represent or be associated with anyone else, other than the purchasing nonprofit organization or public agency, who may benefit in any way in the proposed transaction.

(ii) Administrative requirements. The following policies and regulations apply to grants made under this section:

(A) The policies and regulations contained in Subpart S of Part 1940 of this chapter apply to grantees under this subpart.

(B) The policies and regulations contained in Subpart Q of Part 1940 of this chapter apply to grantees under this subpart.

(C) The grantees will retain records for three years from the date Standard Form (SF)–269A, "Financial Status Report," is submitted. The records will be accessible to FmHA and the grantee in accordance with 7 CFR part 3015.

(D) Annual audits will be required if the grantee has received more than $25,000 of Federal assistance in the year in which the grant funds were received. The audits will be due 13 months after the end of the fiscal year in which funds were received.

(1) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015 and 3016 and OMB Circular A–128.

(2) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A–133.

(iii) Obtaining payment for costs. To obtain advance funds or reimbursement, the nonprofit organization or public agency must:

(A) Submit to the appropriate FmHA Servicing Office SF–270, "Request for Advance or Reimbursement," for an amount not to exceed $10,000;

(B) Submit a copy of the accepted purchase offer or option to purchase and assume responsibility for a prepaying project and related facilities;

(C) As soon as possible after obtaining an accepted purchase order or option, submit a complete transfer and loan package (if applicable), as described in § 1965.65 to Subpart B of Part 1945 of this chapter for transfers and Subpart E of Part 1944 of this chapter for loans to purchase the project;

(D) If less than $10,000 is advanced or reimbursed at the same time, additional funds may be requested so long as the total advanced or reimbursed does not exceed $10,000. SF–270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than 13 months after the close of the fiscal year in which the transaction other than the applicant.

(iv) Processing grants. The following actions will be taken by FmHA when a grant is received:

(A) The FmHA Approval Official will review each grant application package for the amount authorized. The FmHA Approval Official will execute and distribute Form FmHA 1940–1, "Request for Obligation of Funds," in accordance with the Forms Manual Insert;

(B) The Servicing Official will be responsible for reviewing the eligibility of grant applications which states, "Neither the organization nor any of its employees are associated with or represent anyone in this transaction other than the applicant,"

(c) As soon as possible after obtaining an accepted purchase order or option, submit a complete transfer and loan package (if applicable), as described in § 1965.65 to Subpart B of Part 1945 of this chapter for transfers and Subpart E of Part 1944 of this chapter for loans to purchase the project;

(D) If less than $10,000 is advanced or reimbursed at the same time, additional funds may be requested so long as the total advanced or reimbursed does not exceed $10,000. SF–270 will be used to request additional advances or requests for reimbursement. If advance funds are requested, the amount requested may not exceed the amount the grantee expects to use during the 30 days following receipt of the advance. The final draw advance or request for reimbursement shall not be later than 13 months after the close of the fiscal year in which the transaction other than the applicant.

(iv) Processing grants. The following actions will be taken by FmHA when a grant is received:

(A) The FmHA Approval Official will review each grant application package for the amount authorized. The FmHA Approval Official will execute and distribute Form FmHA 1940–1, "Request for Obligation of Funds," in accordance with the Forms Manual Insert;

(B) The Servicing Official will be responsible for reviewing the eligibility of costs estimated to be incurred or submitted for reimbursement;

(C) A grant agreement, prepared in substantially the same format as Exhibit F of this subpart and authorized by grant resolution, will be dated and executed by the applicant on the date of grant closing. The executed agreement will be filed in the casefile.

(D) A grant resolution authorizing the appropriate officials of the applicant to execute the grant agreement will be adopted by the applicant's board of directors or other form of governing body. A certified copy of the resolution is to be submitted to FmHA for the file.

(e) Servicing Office actions when a transfer and subsequent loan is authorized. When notified by the State Office that the National Office has authorized the transfer and subsequent loan, the Servicing Office will:

(1) Submit the application to the State Office of approval in accordance with § 1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the Servicing Office in accordance with
paragraph XV B 1 of exhibit E of subpart C of part 1930 of this chapter unless debt forgiveness RA is used to replace current project RA.

(3) Notify tenants that prepayment of the loan will not be taking place and to whom the ownership of the housing is being transferred. The notification should state that any rent increases resulting from the transfer and loan will be processed in accordance with § 1965.204(b) of this subpart.

(4) Transfer all existing loans in the project on new rates and terms and consolidate and reamortize, if necessary, to maintain project feasibility and reduce rental subsidy payments.

(5) Ensure that all delinquent accounts are brought current, cost items paid in full, project accounts brought current and transferred with the project, and all taxes and liens paid or prorated at closing as applicable. Deferred maintenance identified in previous inspections must be acceptably completed before the transferor may retain any equity.

(6) Insert the restrictive-use provisions contained in Exhibit A–2 of this subpart in the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate.

D. Rental subsidies. No transfer will be approved unless there is sufficient RA available for every tenant who would experience rent overburden after the transfer, assuming that all units vacated will continue to be filled by very low or low-income tenants. Sufficient debt forgiveness RA (DFRA), must be authorized for obligation in accordance with paragraph V C of Exhibit E of Subpart C of Part 1930 of this chapter, when authorization to process the loan is given. The National Office will advise the State Office whether RA will be transferred with the project or if RA will be suspended and transferred to another project within the State when authorization to process the transfer is given. If the latter is chosen, all RA needs at the project will be met with DFRA.

Sec. 1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available

Borrowers not subject to restrictive-use provisions or prohibitions on prepayment may prepay without restrictions within 120 days of meeting either of the following requirements:

(a) No offer to purchase.

(1) At least 180 days have passed since the offer to sell to a local nonprofit organization or public agency began and the advertisement continued for the full 180 days;

(2) The project has been offered to regional and national organizations for at least a 60-day period of the 180 days;

(3) Documentation is provided showing that a determination must be made in accordance with § 1965.215(e) (1), (2), (3), (4), and (8) of this subpart.

(b) Foreclosure. If a project is sold out of the program at a foreclosure sale, the restrictive-use provisions will be retained and added to the deed in accordance with Exhibit A–3 or A–4 of this subpart and paragraph (a) of this section.

(3) Inventory property. Restrictive-use provisions will be retained for projects taken into or sold out of FmHA inventory in accordance with Exhibits A–1 through A–4 of this subpart and paragraph (a) of this section, unless a determination is made in accordance with § 1965.215 and Exhibit E of this subpart that the restrictions may be released or that the property is determined as an inventory property. Tenants will receive all appropriate notifications as they would for prepaying projects not being accelerated.

(d) Bankruptcy. Bankruptcy proceedings will have no effect on contractual requirement for restrictive-use.

Sec. 1965.224 Prepayment of loans caused by advance payments on the account

If the loan on a project, in which the last loan to build or acquire new units was obligated prior to December 15, 1989, reaches a balance of six months remaining payments due to borrower voluntary advance payments or mandatory extra payments required by FmHA regulation or law, the borrower will be notified that the final payment on the account cannot be accepted unless a prepayment request is made. FmHA will inform the borrower that, by law, prepayment regulations must be followed for all loans requesting prepayment subsequent to enactment of the law. The borrower will be required to submit all applicable information required by § 1965.265 of this subpart and complete all applicable forms required by this subpart before a final payment can be accepted.
Sec. 1965.225-1965.248 [Reserved]

Sec. 1965.249 Exception authority

The Administrator may, in individual cases, make an exception to any requirements of this subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, adversely affect the accomplishment of the purposes of the RH or LM programs, or result in undue hardship or burden on participants by applying the requirements. The Administrator may exercise the authority at the request of the State Director. The State Director will submit the request supported by data that demonstrates the adverse impact, citing the particular requirement involved and recommending proper alternative course(s) of action, and outlining how the adverse impact could be mitigated. Exception to any requirement may also be initiated by the Assistant Administrator for Housing.

Sec. 1965.250 OMB control number

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-xxxx. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of 1.3 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. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404-W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No 0575-xxxx), Washington, DC 20503.

Required Clauses for Active Borrowers With Servicing Actions

The following Multi-Family Housing projects made subject to restrictive-use provisions as set forth in their loan documents or security instruments: (a) All loans approved between December 21,1979, and December 15, 1989; (b) Subsequent loans not made to build or acquire new units approved on or after December 15, 1989; (c) Any loans approved prior to December 21,1979, and subsequently made subject to restrictive-use provisions due to a servicing action (e.g., transfer, reamortization, consolidation) as described in Subpart B of Part 1965 or this chapter, or an incentive to deter prepayment of the loan as described in this subpart.

In lieu of or servicing actions meeting the above criteria with prepayment incentives obligated or approved after the effective date of this regulation, will be subject to the following restriction. The restriction will be inserted in the deed, conveyance instrument, loan agreement/notice, assumption agreement, interest credit agreement, or reassignment agreement, as appropriate. The restrictions are applicable for a term of 20 years from the date the last loan was closed or made subject to such restrictions as a result of a servicing action or incentive to not prepay.

The borrower and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in Section 514 or Section 515 of Title V of the Housing Act of 1949, as amended, and FmHA regulations then extant during this 20 year period beginning on the date the project is obligated, or date the project was last made subject to the prepayment restrictive use provisions as a result of servicing actions or incentive to not prepay the loan, authorized under this subpart or other subparts. Until (date), no eligible person occupying the housing shall be required to vacate, or any eligible person wishing to occupy shall be denied occupancy without cause. The borrower will be released from these obligations after that date only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided the residents of such housing will no longer be provided or for which the Government will not accept the borrower's action or lack of action on the part of the tenant or owner agrees to keep a notice posted at the housing. The restrictions are intended to protect only very low- and low-income individuals and families for the remaining useful life of the project, unless the Government subsidy is removed without cause or it is determined there is no longer a need for the housing.

These restrictions will not be superseded by new restrictions imposed by subsequent transfers. Eligible moderate-income tenants living at the project at the time of prepayment will not be required to move as a result of the restrictions. Moderate-income applicants for the housing will continue to retain priority over ineligible applicants for the housing.

Required Clauses for Prepaid Loans Which Were Subject to Restrictive-Use Provisions Prior to the Prepayment

The required clauses contained in this Exhibit pertain to the following multi-family projects, unless an exception to the restrictive-use provisions has been granted in accordance with this subpart:

(a) Any loan on the project obligated between December 21,1979, and December 15, 1989, or subsequent loan not made to build or acquire new units approved on or after December 15, 1989; (b) Any loan made subject to restrictive-use provisions as a result of a transfer, consolidation, or reassignment to set forth in this subpart; (c) Any loan made subject to restrictive-use provisions as a result of accepting an incentive to not prepay as set forth in this subpart; (d) Any loan previously subject to restrictive-use provisions being accelerated.

The preceding projects may only be prepaid if the title to the real property is made subject to the following restrictive-use provisions and incorporated in the security releases. The borrower will also be required to retain enforcement of this provision as well as the Government. During the restricted period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. The owner and any successors in interest agree to use the housing for the purpose of housing very low- and low-income people eligible for occupancy as provided in Farmers Home Administration regulations then extant during the remaining useful life of the project. A tenant or person occupying the housing shall be required to vacate or be denied occupancy without cause, or if the Government wishes to occupy shall be denied occupancy without cause. Rents, other charges, and conditions of occupancy shall be set so that the effect will not differ from what have been, had the project remained in the FmHA program.

The owner agrees to keep a notice posted at the housing, and in a visible place available for tenant inspection, for the remainder of the restrictive-use period, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for "low-and moderate-income" or "very low- and low-income" as shown on existing...
Restrictive-use provisions] tenants for the remainder of the restrictive-use period."

The provisions provide protections to the same categories of tenants who were protected while the loan(s) were in effect, to the extent that they were protected prior to the prepayment and for the length of time remaining under the restrictions prior to the prepayment.

Required Clauses for Prepaid Projects Which Became Subject to Restrictive-Use Provisions at the Time of Prepayment

Multi-Family Housing projects which were not subject to restrictive-use provisions prior to prepayment may, generally, only be prepaid if the title to the real property is made subject to one of the following restrictive-use provisions and the provisions are filed with the security releases. The restrictive-use provisions apply to all loans made prior to December 21, 1979, that were not subsequently made subject to restrictive-use provisions as a result of servicing actions after December 21, 1979. The restrictions will also be used for sales of projects at foreclosure for projects previously subject to restrictive-use provisions. The conditions for which restrictive-use provisions are not required are set forth in § 1965.215 of this subpart.

(A) 20-year Restrictive-Use Provisions. These provisions are used when the owner agrees to restrictive-use provisions for a minimum of a 20-year period, and agrees to offer to sell the assisted housing and related facilities to a qualified nonprofit organization or public agency in accordance with Farmers Home Administration (FmHA) regulation upon termination of the 20-year period. The period is calculated from the date on which the last loan for the project was obligated or applicable servicing action taken. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-2 to this subpart.

"The owner and any successors in interest agree to use the housing for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the Government. Prior to [date period ends] no eligible person occupying or wishing to occupy the housing shall be required, to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period. At the expiration of this period ending [date], the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA."

(B) Loans Over 20 Years Old. These provisions are used when all loans were obligated and applicable servicing actions took place for the project over 20 years prior to the prepayment, and the owner enters into an agreement to immediately attempt to offer the project for sale to a nonprofit organization or public agency in accordance with § 1965.215 of this subpart. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-3 to this subpart.

"The owners and any successors in interest agree to immediately offer to sell the housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration."

(C) Current Tenants Restrictive-Use Provisions. These provisions are used when the owner enters into an agreement that no current tenants will be displaced due to a change in the use of the housing or an increase in rental or other charges, as a result of the prepayment, for as long as the current tenants will occupy the project. The provision may only be used if it is determined by FmHA that the conditions specified in this subpart, addressing the effect of prepayment on minorities, handicapped individuals, and families with children in the project and market area, can be met, allowing an exception from the requirement to offer the project to sale to a nonprofit organization or public body. The borrower will also be required to execute the Restrictive-Use Agreement found at Exhibit G-4 to this subpart.

"The owner and any successors in interest agree to use the housing for the purpose of housing eligible low- and moderate-income people occupying the project at the time the prepayment was accepted, as provided in 7 CFR part 1965, subpart E, and other applicable regulations then extant No other such form has been executed by Grantee"
date of the default. Default by the Grantee will constitute termination of the grant, thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the terms of this Grant Agreement and the laws and regulations under which this grant is made. For further provisions regarding enforcement see 7 CFR 3016.43.

G. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR 3016.20, which will include:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

I. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee’s government which are pertinent to the Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the terms of this Grant Agreement and the laws and regulations under which this grant is made. For further provisions regarding enforcement see 7 CFR 3016.43.

G. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

H. Provide Financial Management Systems, as more specifically provided in 7 CFR 3016.20, which will include:

1. Accurate, current and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds. Grantee shall adequately safeguard all such funds and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

J. Provide an audit report pursuant to 7 CFR 3016 prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

K. Agree to account for and to return to Grantor interest earned on grant funds pertaining their disbursements for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

L. Except as specifically provided in this agreement, comply with the applicable provisions of USDA’s general grant regulations set out in 7 CFR 3016.

M. Comply with the requirements of 7 CFR 3017, Subpart F, relating to drug-free workplace requirements and 7 CFR Part 3018 relating to restrictions on lobbying.

Grantee Agrees that it

A. Will make available to Grantee for the purpose of this Agreement not to exceed 3 which it will advance to Grantee in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee with such assistance as Grantor deems appropriate in acquiring the project.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantor’s grant obligations, with or without available consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor’s financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of this Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph F of this exhibit or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantor and Grantee agree that the continuation of the grant will not produce beneficial results commensurate with the further expenditure of funds.

In Witness Whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized and attested and its corporation seal affixed by its duly authorized

Attest

By

(Title)

United States of America Farmers Home Administration

By

(Title)

Exhibit G-1

Restrictive-Use Agreement

(To be used with Exhibit A-3 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree that the (Name of Project), herein referred to as housing, will be used only as authorized under Section 514 or 515 of Title V of the Housing Act of 1949, as amended, and 7aCode of Federal Regulations (CFR) Part 1930, Subpart E, or other Farmers Home Administration (FmHA) regulations then in existence until (Date Shown on existing restrictive-use provisions) for the purpose of housing low-and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the restrictive-use provisions. During the restrictive period, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be set so that the affect will not differ from what would have been had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the restrictive-use period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR Part 1930, Subpart F, with respect to tenancy and subleasing restrictions and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR Part 1930, Subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations.

Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until (Date restrictive-use period ends):

(NAME OF OWNER) certifies that (NAME OF PROJECT) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (NAME OF OWNER) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: ____________________

Owner: ____________________

By: ____________________
Restrictive-Use Agreement (To be used with paragraph (A) to Exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, as required in 7aCode of Federal Regulations (CFR) part 1965, Subpart E, or other Farmers Home Administration (FmHA) regulations then in existence during the 20-year period beginning (date of the last loan or servicing action) for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to (date period ends), no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner agrees to keep a notice posted at the project for the remainder of the restrictive-use period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population under the restrictive-use period. At the expiration of this period ending (date), the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the restrictive-use period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until (date restrictive-use period ends).

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in accordance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date:
Owner:

(Date)

Restrictive-Use Agreement (To be used with paragraph (B) to Exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to immediately attempt to sell the (Name of Project), herein referred to as housing and related facilities to a qualified nonprofit organization or public agency, as determined by Farmers Home Administration (FmHA) in accordance with the provisions set forth in 7 CFR part 1965, Subpart E. The owner agrees to use the housing as required in 7 CFR part 1965, subpart E, or other regulations then in existence during the sales period for the purpose of housing low- and moderate-income people eligible for occupancy. A tenant or applicant for housing may seek enforcement of this provision, as well as the United States. Prior to a sale to a nonprofit organization or public agency, no eligible person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions such that the effect will not differ from what would have been, had the project remained in the FmHA program. The owner also agrees to keep a notice posted at the project for the remainder of the sales period, in a visible place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for the protected population for the remainder of the sales period.

Furthermore, the owner agrees to be bound by the applicable provisions of 7 CFR part 1930, subpart C, specific to tenant rights and relations for the duration of the sales period. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, lease agreements, rent or occupancy charges, and termination and eviction remain consistent with the provisions set forth in 7 CFR part 1930, subpart C, and to adhere to applicable local, State, and Federal laws. The owner agrees to obtain FmHA concurrence with any changes to the preceding rental procedures that may deviate from those approved at the time of the prepayment, prior to implementing the changes. Any changes proposed must be consistent with the objectives of the program and the regulations. Documentation, including annual income recertifications, shall be maintained to evidence compliance in the event there is a future complaint or audit. The owner must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels. The owner agrees to make the documentation available for Government inspection upon request. The owner and any successors in interest agree to provide the following signed and dated certification to the applicable FmHA Servicing Office or other designated office within 30 days of the beginning of each calendar year until (date restrictive-use period ends).

(Name of Owner) certifies that (Name of Project) is being operated in compliance with the restrictive-use provisions contained in (Applicable release document) and the Restrictive-Use Agreement which sets forth certain requirements for operation of the project for the benefit of low- and moderate-income people in conformance with applicable FmHA regulations. (Name of Owner) understands that failure to operate the project in accordance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date:
Owner:

(Date)

Restrictive-Use Agreement (To be used with paragraph (C) to Exhibit A–4 to this subpart)

(Name of Borrower), herein referred to as owner, and any successors in interest agree to use the (Name of Project), herein referred to as housing, for the purpose of housing low- and moderate-income people occupying the project at the time the prepayment was accepted, as required in 7aCode of Federal Regulations (CFR) part 1965, Subpart E, and other applicable Farmers Home Administration (FmHA) regulations then in existence. No eligible person occupying the housing shall be required to vacate prior to the end of the remaining useful life of the project without cause. Rents, other charges, and conditions of occupancy will be established to meet these conditions for these tenants such that the effect will not differ from what would have been, had the project remained in the FmHA program. Existing tenants are protected to ensure that none experience new or increased rent overburden as a result of owner actions until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a visible place available for tenant inspection, for the remaining useful

Title: Exhibit G–2

Restrictive-Use Agreement

Owner: ---------------------------------------------------------

By: ..............

Title: Exhibit G–3

Restrictive-Use Agreement

Owner: By:

Title: Exhibit G–4

Restrictive-Use Agreement

Owner: By:
Exemption of the Payson Canyon Timber Salvage Project, Uinta National Forest, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal.

SUMMARY: This is notification that timber salvage harvest and reforestation activities to recover and rehabilitate natural resources from recent insect epidemics in the Payson Canyon area, Spanish Fork Ranger District, Uinta National Forest, are exempt from appeal in accordance with 36 CFR 217.4(a)(11).

DATES: Effective April 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Sensibaugh, Resource Assistant, Spanish Fork Ranger District, Uinta National Forest, 44 West 400 North, Spanish Fork, Utah 84660, telephone: 801-342-5260.

SUPPLEMENTARY INFORMATION: Six years of drought in central Utah have reduced soil moisture and weakened conifer trees. Consequently, fir engraver beetle populations have dramatically increased and reached epidemic levels in the Payson Canyon area of the Uinta National Forest. Within the project area, it is estimated that 20%-30% of the trees larger than 8 inches in diameter have died as a result of insect damage during the past five years.

As part of the effort to recover and rehabilitate natural resources damaged by the insect epidemic, Uinta National Forest and Forest Pest Management personnel have developed a proposal to harvest dead and dying timber and reforest damaged acreage. The Forest Service has completed the Payson Canyon Salvage Sale analysis and associated Decision Memo, identified issues, developed alternatives, and analyzed the effects of implementing timber salvage and other recovery activities.

The analysis area for the Payson Canyon Salvage Sale is located approximately 7 miles south of Payson, Utah. The Forest will salvage dead and dying trees on approximately 450 acres within the 900-acre project area and recover approximately 2.5 MMBF. The Payson Canyon project will harvest dead, dying and susceptible trees using ground-based logging systems. Cutting units range from 6 to 50 acres in size. The affected stands are all even-aged in structure, and even-aged harvest methods will be used to regenerate these stands. Harvest methods will range from shelterwood to patch clearcut, as dictated by the beetle infestation.

Natural regeneration will be used to reforest shelterwood and seed tree areas with white fir. Areas where residual overstory densities offer site protection ranging from shelterwood to heavy seed tree will be planted with Douglas-fir. Areas where persistent clearcutting has occurred will be planted with a mix of Douglas-fir and ponderosa pine.

There is no permanent road construction proposed for the project. Temporary work roads will be obliterated upon completion of salvage operations.

Management direction for the Payson Canyon area is established in the Uinta National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides for the removal of salvage timber from lands within the project area. In addition, the Forest Plan prescribes standards to protect soil, water, wildlife, visual, and other onsite resources. The proposed action for the Payson Canyon Salvage Sale is consistent with standards and guidelines, objectives, and direction contained in the Forest Plan.

Regional Forest Pest Management Specialists and Uinta National Forest Timber Staff have analyzed the insect situation and have found no economical or practical means to control the insect epidemic. Although salvage harvesting and reforestation will not completely control the epidemic, these activities will: (1) Help break up insect breeding cycles, (2) recover valuable timber that would otherwise deteriorate, and (3) reforest those areas that have been left without tree cover as a result of the insect-caused mortality. It is extremely important to remove the green trees that are infested with fir engraver beetles prior to larval maturation and flight to new trees. It is also extremely important to remove the dead and dying timber prior to deterioration and subsequent value losses. Through timber salvage operations, breeding insects can be removed in the logs and Knutson-Vandenburg (K-V) funds can be generated for use to restore forest resources that have been damaged by the insect epidemic.

The Forest Supervisor has determined through preliminary scoping and environmental analysis that there is justification to expedite this project.

The decision for the Payson Canyon Salvage Sale may be implemented after publication of this notice in the Federal Register and after the decision document has been signed by the responsible official. If the project were
delayed because of an appeal (delays of up to 150 days are possible), it would be likely the salvage harvest could not be implemented during the 1993 normal operating season. This would result in sustained high beetle populations and subsequent infestation and death of additional trees. It would also result in a loss of volume and value of the timber due to deterioration. The total estimated value of the merchantable dead and dying timber is $250,000. Of this, approximately $62,500 would be returned to counties from 25 percent fund receipts. Delays resulting from appeals could cause the loss of up to one-fourth of this value and potentially make the salvage sale unattractive to timber purchasers. This would jeopardize the objectives of the recovery and rehabilitation project.

Pursuant to 36 CFR 217.4(e)(11), it is my decision to exempt the Payson Canyon Salvage Sale, Spanish Fork Ranger District, Uinta National Forest, from appeal. The project analysis file contains specialist reports disclosing the affects on the environment and addressing issues resulting from the proposal.


Robert C. Joslin,
Deputy Regional Forester, Intermountain Region, USDA Forest Service.

FOR FURTHER INFORMATION CONTACT:
Questions about the proposed action should be directed to: Chris Worth, EIS Team Leader, Emmett Ranger District, phone (208) 365-7000.

SUPPLEMENTARY INFORMATION: The proposed action is to harvest approximately 6 million board feet (MMBF) of sawtimber from about 3,200 acres, by commercial thinning, improvement cuttings, sanitation/salvage, group selection, and clearcuts with reserve trees. Helicopter yarding would be used on about 95 percent of the harvested acres, because much of the terrain is steep, highly erosive, and unsuitable for ground based logging systems. The remaining 5 percent would be harvested with conventional ground-based systems. Up to 40 percent of the Bear Wallow IRA could be affected. A transportation system is largely in place from the past West Fork Helicopter (1974) and the Hardedschrieb (1977) timber sales. Consequently, development would be limited to reconstructing existing helicopter landings and short access road spurs on the periphery of the IRA.

As part of this project, about 600 acre of mature timber stands within the project area would be designated, and managed, as old growth habitat. In addition, approximately six miles of the Middle Fork Payette River road (Forest Rd. 698) would be improved by aggregate surfacing and other measures to reduce sedimentation and protect water quality.

The main purpose of the proposed action is to help achieve the desired future condition of a healthy, resilient forest in which important resource values, including healthy timber stands, are sustained. The action is also needed to maintain and develop large diameter trees within designated old growth areas, improve water quality and fisheries habitat of the Middle Fork Payette River, and to provide wood fiber to the local timber industry and timber-dependent communities.

The project area consists of approximately 5,500 acres of National Forest lands located in T10N, R4E, Sec 1, 2, 11, and 12; T10N, R5E, Sec 25, 26, 35, and 36; and T11N, R5E, Sec 19, 20, and 29 through 32. All timber harvest activities would occur within the Bear Wallow Inventoried Roadless Area.

Alternatives to this proposal will consider various amounts and combinations of activities. The most significant differences between alternatives will be: (1) The extent of clearcuts with reserve trees prescribed; (2) the amount of the IRA that is treated; (3) the volume of timber harvested; and (4) the level of improvement to a portion of the Middle Fork Payette river road. A "No Action" (i.e., none of the proposed activities would be implemented) alternative will also be considered in the analysis.

As lead agency, the Forest Service will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Each alternative will include mitigation measures and monitoring requirements.

The Rocky Canyon EIS will tier to the 1990 Boise Land and Resource Management Plan (Forest Plan) and the Forest Plan Final Environmental Impact Statement (FEIS). The Forest Plan provides guidance for management activities within the project area through its goals, objectives, standards, and management area direction. The project area is located in the Scriber Creek Management Area 45 of the Forest Plan. Direction for this area emphasizes the maintenance of high quality visual resource along the Middle Fork Payette River, improvement of fish habitat and water quality, fire management to reduced wildfire-caused damage to productive timberlands and private
be designated by the State of Idaho as a stream segment of concern. The proposed timber harvest may create sediments which decrease fish populations and degrade water quality in the Middle Fork Payette River.

2. Proposed timber harvest may affect the undeveloped character of the Bear Wallow IRA, dispersing backcountry users to other nearby roadless areas, e.g. Peace Rock IRA. The Forest Service should explain what the recreation impacts to other roadless areas may occur.

3. Logging is important to timber-dependent communities. The use of helicopter yarding systems may reduce the county's ability to generate revenues, as well as jeopardize the sale's economic viability.

4. The Middle Fork Payette River is eligible for designation as a Recreational river under the Wild and Scenic Rivers Act. Timber harvesting may change the characteristics of the area, making it unsuitable for possible designation.

5. Timber harvest may fragment upland and stream corridors within the area, affecting biological and ecosystem diversity.

Other issues commonly associated with timber harvest activities may include: prescribed fire/fuel abatement, forest health, cultural resources, and soils. This list may be verified, expanded, or modified based on public comments and alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3).

The Forest Service believes, at this early stage of scoping, it is important to inform potential reviewers of several court rulings related to public participation in the environmental analysis process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contents (Vermont Yankee Nuclear Power Corp. v. NRC, 435 U.S. 519, 553 (1978)). Also, environmental objections that could have been raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed (City of Angoon v. Hodel, 803 F.2d 1016, 1022, Ninth Circuit, 1986; and Wisconsin Heritage, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of existing caselaw, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and data are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

Dated: March 31, 1993.

Stephen P. Mealey,
Forest Supervisor, Boise National Forest.
[FR Doc. 93-7926 Filed 4-5-93; 8:45 am]
BILLING CODE 3410-11-M

Advisory Council Meeting, Allegheny Wild and Scenic River, Allegheny National Forest, PA

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Southern Advisory Council for the Allegheny Wild and Scenic River will meet at 7 p.m. Tuesday, April 20, 1993, at the Franklin Public Library, Franklin, PA.

The Northern Advisory Council will meet at 8:45 p.m., Wednesday, April 21, 1993, at the Oil City Public Library, Oil City, PA.


Dated: March 26, 1993.
Lionel A. Lamery, Wild and Scenic River Coordinator.
[FR Doc. 93-7901 Filed 4-5-93; 8:45 am]
BILLING CODE 3410-11-M

Rural Electrification Administration

Associated Electric 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) has made a finding of no significant impact (FONSI) with respect to the potential environmental impacts resulting from a proposal by Associated Electric Cooperative, Inc. to convert its Thomas Hill Plant to burn low sulfur western coal. The FONSI is based on a borrower's environmental report prepared by Associated Electric Cooperative, Inc. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the borrower's environmental report as its environmental assessment for the proposed conversion of the Thomas Hill Plant to burn low sulfur western coal.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.
approximately 900 acres at the south end of the Thomas Hill Reservoir in northwestern Randolph County, Missouri, about 13 miles northwest of Moberly.

The modifications to the existing Thomas Hill Plant will consist of the following:

1. Construction of a 6,700 foot loop track within the existing plant boundaries. The base for the loop rail track will be designed in such a manner that the area enclosed can be used as a disposal pond;
2. Modifications to the fuel handling and storage system consisting of three conveyor systems, a sample house, a telescoping chute, and reclaim hoppers;
3. Modifications to the existing boilers including sootblowing equipment, upgrading of inspection ports, increasing forced draft fan capacity, and modifying the cyclone burners to handle the different slag characteristics of western coal;
4. Add a bypass duct around the scrubber on Unit 3;
5. Modifications to Unit 2 to meet particulate emission limits which may include de-rating the unit, flue gas conditioning, or replacing the original precipitator;
6. Fly ash from Units 1 and 2, will no longer be mixed with scrubber sludge from Unit 3. Fly ash will be pneumatically conveyed to a silo and loaded onto trucks for transport to the disposal area;
7. Establish new settling basins for solids removal; and
8. Increase water use at the plant to keep the coal handling area clean to prevent fire in the area.

A number of alternatives to the one being proposed, including no action, were considered. These involve various alternative ways to meet the requirements of the Clean Air Act Amendments of 1990 such as the purchase of sulfur dioxide allowances, adding scrubbers to the existing plant, and a number of ways to phase in the conversion to low sulfur western coal. A number of alternatives considered will result in the closing of Associated Electric Cooperative, Inc.'s, Prairie Hill Mine at some point in time. A consequence of closing the mine will be the loss of mining related jobs which in turn will have an effect on the local economy.

Copies of the environmental assessment and FONSI are available for review during normal business hours at, or can be obtained from, REA at the address provided herein or from Mr. Charles Means, Associated Electric Cooperative, Inc., P.O. Box 754, Springfield, Missouri 65801-0754.

Dated: March 31, 1993.

James B. Huff, Sr.,
Administrator.
[FR Doc. 93-7951 Filed 4-5-93; 8:45 am]
BILLING CODE 3410-16-F

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Transportation, et al.; Notice of Consolidated Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.


Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 93-7887 Filed 4-5-93; 8:45 am]
BILLING CODE 3510-D5-F

DEPARTMENT OF COMMERCE

International Trade Administration

Department of Transportation, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.


Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 93-7887 Filed 4-5-93; 8:45 am]
Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether Instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Manufacturer: Finnigan MAT, Germany.

Intended Use: The instrument will be used for measurement of isotopic abundances of 13C to 12C in a mixture of organic compounds without laborious sample preparation requirements. Specific to this task is the investigation of flavor and food products, which are composed of numerous organic compounds, for their source material and process elucidation. In addition, the instrument will be used for educational purposes in graduate courses dealing with the isotopes of carbon, hydrogen, nitrogen, oxygen, and sulfur.

Application Received by Commissioner of Customs: February 13, 1993.

Docket Number: 93-009. Applicant: Iowa State University, Purchasing Department, Ames, IA 50011.

Manufacturer: Thermo Scientific, United Kingdom.

Intended Use: The instrument will be used to conduct interdisciplinary research to understand and evaluate the linkages of food production, processing, distribution, and design of new foods to consumer demands, food selection, and consumption for nutritional assurance and health maintenance. In addition, the instrument will be used for educational purposes in the courses Food Science and Human Nutrition 699A, Graduate Research — Nutrition; Food Science and Human Nutrition 575, Nutrient Content of Processed Foods; Food Science and Human Nutrition 508, Laboratory Methods. Application Received by Commissioner of Customs: February 5, 1993.

Docket Number: 93-011. Applicant: North Carolina State University, Campus Box 7212, Raleigh, NC 27695-7212. Instrument: Sonice Telemetry

Intended Use: The instrument will be used to track striped bass migratory patterns from the start (March-April) to the end of summer. The research will be conducted by graduate students working towards the MS and Ph.D. degrees in Zoology, Ecology, and Fisheries and Wildlife Sciences.

Application Received by Commissioner of Customs: February 13, 1993.


Intended Use: The instrument will be used for investigations of ultrastructural changes that occur in tissues and cells from human or animal sources and biologically important macromolecules after exposure to a variety of experimental interventions that are designed to mimic or detect processes that cause disease. Specific emphasis in these studies will be given to the regulation of gene expression and the localization and quantitation of specific gene products. Application Received by Commissioner of Customs: February 12, 1993.


Intended Use: The instrument will be used for the study of cytosolic calcium in cultured cells from cows and rats in experiments to determine if and how hypoxia alters ion channel function and calcium homostasis. Application Received by Commissioner of Customs: February 12, 1993.

Docket Number: 93-014. Applicant: U.S. Department of Agriculture, ARS, NAA, Appalachian Soil and Water Conservation Research Laboratory, P.O. Box 876, Airport Road, Beckley, WV 25802-0867. Instrument: Comair Root Length Scanner. Manufacturer: Hawker de Havilland Ltd., Australia.

Intended Use: The instrument will be used for measurement of plant root length of forage species during investigations to identify the best tillage methods to use to increase crop production. Application Received by Commissioner of Customs: February 17, 1993.


Intended Use: The instrument will be used to determine the surface structures of metals and semiconductors through investigations of phenomena such as phase transitions, adsorption, recombination, nucleation and growth, on crystal surfaces in real time. Application Received by Commissioner of Customs: February 17, 1993.


Intended Use: The instrument will be used to measure the chlorophyll content of seawater on site. Measurements will be taken at over 100 locations in the NW Gulf of Mexico during each of 13 seasonal cruises conducted for the purpose of hydrographic survey by the LATEX program.

Application Received by Commissioner of Customs: February 25, 1993.


Intended Use: The instrument will be used for studies of the surface structure of semiconductor materials. Experiments will be conducted involving in-situ observation on surfaces during growth of the materials including substrate characteristics of those earthquakes and through which seismic waves pass. In addition, the instrument will be used for educational purposes in the course MAT 699: Thesis Research which involves research directed toward achievement of advanced university degrees of master of science and doctorate of philosophy.

Application Received by Commissioner of Customs: March 1, 1993.

Docket Number: 93-018. Applicant: St. Louis University, Department of Earth and Atmospheric Sciences, 3507 Laclede Avenue, St. Louis, MO 63103. Instrument: Seismograph. Manufacturer: G. Streckeisen, Switzerland.

Intended Use: The instrument will be used to record earthquakes and to deduce from those recordings the source characteristics of those earthquakes and to study the properties of the earth through which seismic waves pass. In addition, the instrument will be used in the course GEO-A472: Seismological.
Instrumentation to teach students how to calibrate instruments and observe the data produced by the instruments.

Application Received by Commissioner of Customs: February 26, 1993.

Docket Number: 93-019. Applicant: Washington State University, Pullman, WA 99164. Instrument: Gas Source Isotope Ratio Mass Spectrometer, Model Delta S. Manufacturer: Finnigan, MAT, Germany. Intended Use: The instrument will be used to study geologic materials: rocks and minerals collected from the Rico area, Colorado, the Galapagos Islands, the Republic area, Washington, and the Battle Mountain area, Nevada. The areas of investigation will include:

1. Using oxygen isotope ratios of rocks which have reacted with hot fluids in the fossil geothermal area at Rico, Colorado to measure the size of the plume and of the geothermal area, and to determine the sources of fluids involved in the geothermal activity,
2. Measurement of oxygen isotope ratios in volcanic rocks erupted from volcanoes in the Galapagos Islands and
3. Measurement of oxygen and hydrogen isotope ratios in samples collected from the Fortitude gold deposit, Battle Mountain, Nevada and the Overlook gold deposit near Republic, Washington, with the objective of determining fluid sources and flowpaths for these deposits.

In addition, the instrument will be used for educational purposes in the course Geology 584, Isotope Geology.

Application Received by Commissioner of Customs: February 26, 1993.

Docket Number: 93-020. Applicant: Massachusetts Institute of Technology, Department of Chemistry, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: ‘Canterbury’ Cryostopped-flow Sample Handling Unit and Anerobic Kit, Models SHF-41 and OPT-417. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: The instrument will be used for continuing studies to understand the biological role of iron in oxygen carrying proteins and in oxygenase enzymes. Application Received by Commissioner of Customs: February 26, 1993.

Docket Number: 93-021. Applicant: Colorado State University, Department of Chemistry, Center and Pitkin, Fort Collins, CO 80523. Instrument: Trisector Double Focusing Geometry Mass Spectrometer, Model Autospec-5000. Manufacturer: VG Instruments, United Kingdom. Intended Use: The instrument will be used to conduct various research projects that include the following:

1. Total synthesis of avermectin and calyculin,
2. Total synthesis of antifungal agents,
3. Redox glycosidation,
4. Application of mass spectrometry to the immunochromatography of the cell wall of the leprosy and tubercle bacilli,
5. The role of mass spectrometry in past and future research on the structural basis of the immunogenicity and pathogenesis of mycobacteria,
6. Study of vanadium bio-organic chemistry and biochemistry,
7. Development of new, useful synthetic organic methodology utilizing organo transition metal chemistry, and the application of that methodology to the synthesis of natural and unnatural biologically active compounds,
8. A new program which deals with new asymmetric methodology to form C-C and C-H bonds with total absolute stereochemistry,
9. Several research projects spanning bio-organic chemistry, synthetic organic chemistry and molecular biology and
10. Studies to provide new information on the stereochemistry of the individual enzymatic processes involved in CPA metabolism.

Application Received by Commissioner of Customs: March 1, 1993.

Docket Number: 93-022. Applicant: University of Rochester, Department of Pathology and Laboratory Medicine, 601 Elmwood Avenue, Rochester, NY 14642. Instrument: Electron Microscope, Model H-7100. Manufacturer: Hitachi Scientific, Japan. Intended Use: The instrument will be used to examine human tissue to determine its ultrastructure, i.e. the minute components of various cell types and their physical Interrelationships. In addition, the instrument will be used to provide audiovisual materials that will be used to introduce students to the basic mechanisms of human disease.

Application Received by Commissioner of Customs: March 8, 1993.


Docket Number: 93-024. Applicant: University of Alabama at Birmingham, UAB Station, Birmingham, AL 35294. Instrument: Mass Spectrometer, Model API III. Manufacturer: Perkin Elmer-Scler, Canada. Intended Use: The instrument will be used for a variety of analyses, including large macromolecules (proteins, places of DNA, etc.) and trace levels of anti-cancer and anti-AIDS drugs in serum and urine. Application Received by Commissioner of Customs: March 11, 1993.

Frank W. Creele, Director, Statutory Import Programs Staff.

[FR Doc. 93-7885 Filed 4-5-93; 8:45 am]

BILLING CODE 5110-06-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Permitting Entry of Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 1, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs permitting entry of certain textile and apparel products.

EFFECTIVE DATE: April 1, 1993.


SUPPLEMENTARY INFORMATION:


The Government of the Democratic Socialist Republic of Sri Lanka has notified the U.S. Government that one of the two institutions (currently Greater Colombo Economic Commission and Ministry of Textile Industries) authorized to issue visas for textile and apparel products exported from Sri Lanka has changed its name from “Greater Colombo Economic Commission” to “Board of Investment of Sri Lanka.”

In the letter published below, the Chairman of CITA directs the Chairman of CITA to “withdraw from warehouse for consumption of textile and apparel products, produced or manufactured in

37863
Sri Lanka and exported from Sri Lanka prior to May 1, 1993 which are accompanied by a visa stamp bearing either the name “Greater Colombo Economic Commission” or “Board of Investment of Sri Lanka.” Effective on May 1, 1993, a visa stamp bearing the designation “Greater Colombo Economic Commission” will no longer be accepted. Shipments exported on or after May 1, 1993 must be accompanied by a visa stamp with the designation “Board of Investment of Sri Lanka.”

Visas issued by the Ministry of Textile Industries will continue to be accepted. See 53 FR 34573, published on September 7, 1988.

J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.
Committee for the Implementation of Textile Agreements
April 1, 1993.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 1, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka which are not properly visaed in Sri Lanka and exported from Sri Lanka prior to May 1, 1993 which are accompanied by a visa stamp with either the designation “Greater Colombo Economic Commission” or “Board of Investment of Sri Lanka.”

Shipments of textile products, produced or manufactured in Sri Lanka and exported from Sri Lanka on and after May 1, 1993 must be accompanied by a visa stamp with the designation “Board of Investment of Sri Lanka” (formerly “Greater Colombo Economic Commission”).

Visas issued by the Ministry of Textile Industries, the other authorizing institution, will continue to be accepted.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–7935 Filed 4–5–93; 8:45 am]
BILING CODE 3610-DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 93–C0005]

Caribe Marketing and Sales Co., Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Federal Hazardous Substances Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the Federal Register in accordance with the terms of 16 CFR 1118.20(a)–(h).

Published below is a provisionally-accepted Settlement Agreement with Ektelon, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 21, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 93–C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.


SUPPLEMENTARY INFORMATION: (attached).

Sheldon D. Butts,
Deputy Secretary.

Settlement Agreement and Order

1. Caribe Marketing & Sales Co., Inc. (hereinafter, “Caribe”), a corporation, enters into this Settlement Agreement (hereinafter, “Agreement”) with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff’s allegations that Caribe knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

II. The Parties

2. The Commission has jurisdiction over Caribe and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, “CPSA”), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter, “FHSA”), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

4. Caribe is a corporation organized and existing under the laws of the United States Commonwealth of Puerto Rico since 1983, with its principal corporate offices located at 1900 Fernandez Juncos Avenue, Santurce, Puerto Rico 00910. Caribe is engaged in the business of importing, exporting, and selling children’s toys, stationery, and houseware.

III. Allegations of the Staff

5. Between July 1991, and November 16, 1991, Caribe caused the introduction into interstate commerce of the following toys and rattles intended for use by children under three years of age.

<table>
<thead>
<tr>
<th>Name of product/item No.</th>
<th>Number of units</th>
<th>Hazard</th>
<th>Collection date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fun Time Little Little Town Play Set, Toy/543</td>
<td>36</td>
<td>Choke</td>
<td>08/21/91</td>
</tr>
<tr>
<td>Pull Along Take a Part Loco, Toy/3211</td>
<td>108</td>
<td>Choke</td>
<td>08/21/91</td>
</tr>
<tr>
<td>Pull Along Dr. Robot Phone Bank, Toy/689</td>
<td>82</td>
<td>Choke/Aspiration</td>
<td>08/21/91</td>
</tr>
<tr>
<td>Cloud Buster Plane, Toy/AK128</td>
<td>480</td>
<td>Choke/Aspiration</td>
<td>10/22/91</td>
</tr>
</tbody>
</table>
6. The toys identified in paragraph five above are subject to, but failed to comply with, the Commission’s Small Parts Regulation, 16 CFR part 1501, in that when tested under the “use and abuse” test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. The rattles identified in paragraph five above are subject to, but failed to comply with, the Commission’s Requirements for Rattles, 16 CFR part 1510, in that when tested under the “use and abuse” test procedures set forth in 16 CFR 1500.51, separated parts of the rattle enter and penetrate the rattle test fixture specified in 16 CFR 1510.4.

8. Because separated parts of the toys identified in paragraph five above fit completely within the test cylinder as specified in 16 CFR 1501.4, each of the toys identified in paragraph five above presents a “mechanical hazard” within the meaning of (a) section 2(a) of the FHSA, 15 U.S.C. 1261(a) (choking, aspiration and/or ingestion of small parts).

9. Because separated parts of the rattles enter and penetrate the rattle test fixture specified in 16 CFR 1510.4, each of the rattles identified in paragraph five above presents a “mechanical hazard” within the meaning of (a) section 2(a) of the FHSA, 15 U.S.C. 1261(a) (choking, aspiration and/or ingestion of small parts).

10. Pursuant to 16 CFR 1500.18(a)(9), each of the toys identified in paragraph five above is a “banned hazardous substance” within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance).

11. Pursuant to 16 CFR 1500.18(a)(1), each of the rattles identified in paragraph five above is a “banned hazardous substance” within the meaning of section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance).

12. Knowingly causing the introduction into interstate commerce of the aforesaid banned hazardous toys and rattles are prohibited acts pursuant to section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which civil penalties may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Caribe

13. Caribe denies the allegations of the staff set forth in paragraphs five through twelve above that it has knowingly introduced or caused the introduction into commerce of the aforesaid banned hazardous toys or rattles, or that it has violated the FHSA as alleged by the staff.

V. Agreement of the Parties


15. Caribe agrees to pay to the Commission a civil penalty in the amount of fifteen thousand and 00/100 dollars ($15,000.00), as follows: Fifteen hundred and 00/100 dollars ($1,500.00) within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement; six thousand and 00/100 dollars ($6,000.00) on or before January 22, 1993; and seven thousand and five hundred dollars and 00/100 ($7,500.00) on or before June 22, 1993. Interest shall be paid at the federal legal rate of interest for each day any payment is not made after its due date. The entire balance shall become due and payable if any payment is not made within thirty (30) days after its due date. Payment in full shall constitute settlement of the staff’s allegations set forth in paragraphs five through twelve above that Caribe knowingly violated the FHSA.

16. The Commission does not make any determination that Caribe knowingly violated the FHSA. The Commission and Caribe agree that this Agreement is entered into for the purposes of settlement only.

17. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Caribe knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission’s actions, (3) to a determination by the Commission as to whether Caribe failed to comply with the FHSA as aforesaid, and (4) to a statement of findings of fact and conclusions of law.

18. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedures set forth in 16 CFR 1118.20(a)-(b). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the Federal Register.

20. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Caribe to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

22. The provisions of the Settlement Agreement and Order shall apply to Caribe and each of its successors and assigns.

Respondent Caribe Marketing & Sales Co., Inc.

Manual Fernandez-Barroso,
President, 1900 Fernandez Juncos Avenue,
San Juan, Puerto Rico 00910.

Commission Staff.

David Schmelizer,
Assistant Executive Director, Office of
Compliance and Enforcement.

Alan H. Schoen,
Director, Division of Administrative
Litigation, Office of Compliance and
Enforcement.

Manuel Fernandez-Barroso,
Director, Division of Administrative
Litigation, Office of Compliance and
Enforcement.

Alan H. Schoen,
Trial Attorney, Division of Administrative
Litigation, Office of Compliance and
Enforcement.


Earl A. Gershenow,
Trial Attorney, Division of Administrative
Litigation, Office of Compliance and
Enforcement.


Dennis C. Kacoyanis,
Trial Attorney, Division of Administrative
Litigation, Office of Compliance and
Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Caribe Marketing & Sales Co., Inc. (hereinafter, “Caribe”), a corporation, and the staff of the Consumer Product Safety Commission and the Commission having jurisdiction over the subject matter and Caribe; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further ordered, That upon final approval of the Settlement Agreement, Caribe shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of fifteen thousand and 00/100 dollars ($15,000.00) as follows: Seven thousand and five hundred dollars and 00/100 ($7,500.00) within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement; and seven thousand and five hundred dollars and 00/100 ($7,500.00) on or before June 22, 1993. Interest shall be paid at the federal legal rate of interest for each day any payment is not made after its due date. The entire balance shall become due and payable if any payment is not made within thirty (30) days after its due date. Payment in full shall constitute settlement of the staff’s allegations set forth in paragraphs five through twelve above that Caribe knowingly violated the FHSA.

Provisionally accepted and Provisional Order issued on the 31st day of March 1993.

By Order of the Commission.

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

[FR Doc. 93-7985 Filed 4-5-93; 8:45 am]
BILLING CODE 6350-01-M

[CPSC Docket No. 93-C0004]

Ektelon, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 CFR part 1118.20(e)-(h).

Published below is a provisionally-accepted Settlement Agreement with Ektelon, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 21, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 93-C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.


SUPPLEMENTARY INFORMATION: (attached).

Dated: March 31, 1993.

Sheldon D. Butts,
Deputy Secretary.

Settlement Agreement

This Settlement Agreement and Order entered into between Ektelon, Inc., a corporation (hereinafter, “Ektelon”) and the staff of the Consumer Product Safety Commission (hereinafter, “staff”), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. Parties

1. Ektelon is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 8920 Aero Drive, San Diego, California 92123. Ektelon sells and distributes racquetball equipment nationwide.


II. Jurisdiction

3. This matter concerns a particular model of the Interceptor Eyeguard (hereinafter, “Eyeguard”) which was distributed by Ektelon for sale to consumers for use in the recreational sport of racquetball during the time period of November 1989 to March 1990. The Eyeguard is, therefore, a “consumer product” within the meaning of section 3(a)(1) of the Consumer Product Safety Act (hereinafter, “CPSA”), 15 U.S.C. 2052(a)(1).

4. Between November 1989 and March 1990, Ektelon sold and distributed the model of the Eyeguard in question, under the Eyeguard label, nationwide. Ektelon is, therefore, a “private labeler” and “distributor” of a “consumer product” which has been “distributed in commerce,” as those terms are defined in sections 3(a)(1), (5), (7), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (5), (7), and (11).

III. Product

5. The Eyeguard is a safety device intended to be worn by the racquetball player to protect the user against injury to the eye. The Eyeguard is made with a nylon frame, and polycarbonate lenses and side shields.

IV. Staff’s Allegations of Defect and Violation of the Reporting Requirement of 15 U.S.C. 2064(b)

6. Between November 1989 and March 1990, Ektelon distributed nationwide approximately 1385 Eyeguards that contained improperly installed lenses. The lenses were incorrectly ground by subcontractors and did not fit properly in the Interceptor frames. When hit directly by a racquetball, the lens could pop inward and cause injury to the eye and surrounding facial area.

7. Between January 1990 and October 1990, Ektelon learned of eight (8) incidents involving a lens popping inward and causing injuries. Ektelon voluntarily recalled the Eyeguard, but did not report the defect associated with the Eyeguard to the Commission.

8. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires a manufacturer of a consumer product who obtains information that reasonably supports
the conclusion that its product contains a defect which could create a substantial product hazard to inform the Commission immediately of the defect. In February 1990, Ektelon knew, or should have known, that the Eyeguard contained a defect which could create a substantial product hazard within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2). The knowing failure of Ektelon to report the defect to the Commission is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), for which a civil penalty may be assessed and recovered pursuant to section 20 of the CPSA, 15 U.S.C. 2069.

V. Response of Ektelon
9. Ektelon denies each and all of the staff's allegations with respect to its Interceptor Eyeguard, including that in February 1990, Ektelon possessed information which reasonably supported the conclusion that the Eyeguard contained a defect which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a); and therefore, denies that it failed to meet its obligation to report the information concerning the Eyeguard to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b).
10. Immediately after being apprised of a possible problem with the Eyeguard lenses, Ektelon conducted an internal investigation. This investigation showed that approximately 1385 of the Eyeguards shipped for distribution had improperly installed lenses. However, in the interest of preventing further injuries, Ektelon initiated a voluntary recall on March 12, 1990. Ektelon believes that virtually all of the Interceptor Eyeguard units in question have been returned to Ektelon. Based on the limited number of injuries, the nature of the injuries reported, and the information in Ektelon's possession concerning the number of Eyeguards with improperly installed lenses actually distributed in commerce, Ektelon believed that a report was not required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).
11. The model of the Eyeguard in question was distributed from November 1989 to March 1990. This matter does not relate to the current Interceptor Eyeguard distributed by Ektelon.

VI. Agreement of the Parties
12. Ektelon agrees that the Commission has jurisdiction in this matter solely for purposes of entry and enforcement of this Settlement Agreement and Order pursuant to sections 15(b), 19(a)(4), and 20 of the CPSA, 15 U.S.C. 2064(b), 2066(a)(4), and 2069.
13. Ektelon agrees to pay to the Commission a civil penalty in the amount of twenty-five thousand dollars ($25,000) within thirty (30) days after receipt of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in full settlement of the staff's allegations that Ektelon knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), by failing to notify the Commission of the allegedly defective Eyeguard.
14. The Commission makes no determination that the Eyeguard contains a defect which could create a substantial product hazard or that a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred. Statements contained herein are in connection with the compromise of a disputed claim, and nothing in this Settlement Agreement and Order shall be deemed by the Commission as an admission by Ektelon of any fault, liability, or statutory violation.
15. The payment of the penalty provided in paragraph 13 of this Settlement Agreement, and the waivers of the procedural rights by Ektelon contained in paragraph 16 of this Settlement Agreement, are made in the interest of avoiding the time and cost of litigation, and without any admission of liability on the part of Ektelon. In making this payment and these waivers of procedural rights, Ektelon does not concede that its Eyeguard contained a defect which could create, or which created, a substantial product hazard within the meaning of section 15(b) of the CPSA, 15 U.S.C. 2064(b) or that it had a reporting obligation under section 15(b).
16. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Ektelon knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or judicial review of the validity of the Commission's action, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law.
17. For purposes of section 8(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint had issued; and, the parties agree to the issuance of a press release announcing the Agreement, the appended hereto as "Exhibit A."
18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the Federal Register in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the Federal Register, in accordance with 16 CFR 1118.20(f).
19. Upon final acceptance of this Settlement Agreement and Order by the Commission and payment of the twenty-five thousand dollars ($25,000) settlement amount by Ektelon, the Commission agrees not to pursue any penalty proceeding for a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), relating to the Ektelon Interceptor Eyeguards sold and distributed between November 1989 and March 1990, which are the subject of this Settlement Agreement and Order.
20. The parties further agree that the Order attached hereto as "Exhibit B" and incorporated herein by reference, shall be issued under the CPSA, 15 U.S.C. 2051 et seq.; and that a violation of the Order shall subject Ektelon to appropriate legal action.
21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.
22. The provisions of the Settlement Agreement and Order shall apply to Ektelon and to each of its successors and assigns.

Respondent
Dated: January 8, 1993.
By: Norman Peck, President, Ektelon Corporation.
Commission Staff
By: Earl A. Gershenow, Trial Attorney, Compliance and Administrative Litigation.

Draft Press Release
Ektelon, Inc. to Pay $25,000 to Settle Civil Penalty Case.
WASHINGTON, DC—The U.S. Consumer Product Safety Commission

The content of this press release was provided to the U.S. Consumer Product Safety Commission, the order was issued, and the case was closed.
(CPSC) has voted provisionally to accept a settlement agreement in the matter of Ektelon, Inc., a corporation, in which Ektelon, Inc. will pay $25,000 to resolve allegations that the firm failed to report in a timely manner an alleged defect in a discontinued version of its Interceptor Eyeguard as required under the Consumer Product Safety Act (CPSC). The Interceptor Eyeguard is a safety device worn like eyeglasses to protect the eye from injury while playing racquetball.

CPSC staff alleged that between January 1990 and October 1990, Ektelon learned of eight incidents involving the lens of the discontinued Eyeguard popping inward and causing injury, but did not report the alleged defect associated with the eyeguard to the Commission as required by the CPSA. Ektelon, located in Princeton, New Jersey, distributes racquetball equipment nationwide. In 1990, Ektelon voluntarily recalled the allegedly defective model of the Interceptor Eyeguard. Ektelon believes that virtually all of the units that contained the improperly installed lenses have been returned to the company. No units made on or after March 1990 are involved in this matter.

CPSC seeks civil penalties to deter violations of the laws it administers as part of its mission to protect the public from unreasonable risks of injury and death associated with consumer products. The Commission's objective is to help reduce the estimated 28.6 million injuries and 21,700 deaths that occur each year with the 15,000 different types of consumer products within CPSC's jurisdiction.

Note: To report an unsafe consumer product or a product-related injury, consumers may call the U.S. Consumer Product Safety Commission's toll-free hotline (1-800-638-2772; the Maryland TTY number is 1-800-492-4820).

Order
Upon consideration of the Settlement Agreement entered into between respondent Ektelon, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Ektelon, Inc.; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below, and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Ektelon, Inc. shall pay to the order of the Consumer Product Safety Commission a civil penalty in the amount of twenty-five thousand and 00/00 dollars ($25,000.00) within twenty (20) days after receipt of the Final Order in this matter.

Provisionally accepted and Provisional Order issued on the 31st day of March, 1993.

By Order of the Commission:
Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

DEPARTMENT OF DEFENSE
Office of the Secretary

Defense Science Board Task Force on Defense Acquisition Reform (Phase I)

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase I) will meet in closed session on April 15, 1993 at the Pentagon, Arlington, 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 define the scope and method for proceeding with a comprehensive modification to the process by which the Department of Defense acquires goods and services.

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. 552(b)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: April 1, 1993.
Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

Department of the Army

Availability of U.S. Patents for Non-exclusive, Exclusive or Partially Exclusive Licensing

ACTION: Notice of availability.

AGENCY: U.S. Army Research Laboratory, Electronics and Power Sources Directorate, DOD.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the following U.S. patents for non-exclusive, exclusive or partially exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.


SUPPLEMENTARY INFORMATION: These patents cover a wide variety of technical arts including permanent magnet designs for various applications, power sources, phased array antenna, microstrip devices and applications, varying types resonators and oscillators for different applications, as well as many other different technical arts.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99-502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the Army Research Laboratory, Electronics and Power Sources Directorate, wishes to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

1. Title: Leakage-Free Linearly Varying Axial Permanent Magnet Field Source
Inventor: Herbert A. Leupold.

2. Title: Method of Making a Long Lived High Current Density Cathode from Tungsten and Iridium Powders
Inventors: Louis E. Branovich, Gerard L. Freeman, Bernard Smith.

3. Title: Stripline Transformer Adapted for Inexpensive Construction

4. Title: Resonator Insensitive to Paraxial Accelerations

5. Title: Method of Making a Low Aging Piezoelectric Resonator

6. Title: Method of Making a Thermionic Field Emitter Cathode.
Inventors: Bernard Smith, Louis E.
84. Title: Temperature Compensated Crystalline Oscillator (TCXO) With Improved Temperature Compensation. 
Inventor: John A. Kosinski. 
Patent No: 4,951,007—Issued 08/21/90.

85. Title: Permanent Magnet Structure For a Nuclear Magnetic Resonance Imaging For Medical Diagnostics. 
Inventors: Herbert A. Leupold, Ernest Potenziani, Ill. 

86. Title: Method of Preparing a Thin Diamond Film. 
Inventor: Richard A. Neifeld. 
Patent No: 4,954,403—Issued 09/04/90.

87. Title: High Temperature Molten Salt Thermal Electrochemical Cell. 
Patent No: 4,957,463—Issued 09/18/90.

88. Title: Method of Making a Long Life High Current Density Cathode From Tungsten and Iridium Powders Using a Quaternary Compound as the Impregnant. 
Inventors: Louis E. Branovich, Bernard Smith, Gerald L. Freeman, Donald W. Eckart. 
Patent No: 4,990,818—Issued 02/05/91.

89. Title: Method of Modifying the Dielectric Properties of an Organic Polymer Film. 
Inventors: Michael Binder, Robert J. Mammon. 
Patent No: 4,957,602—Issued 09/18/90.

90. Title: Connector for Splicing Optical Fibers. 
Inventor: Howard Winhansky. 

91. Title: Real-Time Rejection Circuit to Automatically Reject Multiple Interfering Hopping Signals While Passing a Lower Level Desired Signal. 
Inventors: William J. Skudera, Jr., Stuart D. Albert. 

92. Title: Microwave Transmission Line and Method of Modulating the Phase of a Signal Passed Through Said Line. 
Inventor: Richard A. Neifeld. 
Patent No: 4,967,167—Issued 10/30/90.

93. Title: Rechargeable Lithium Battery System. 
Inventors: Steven M. Slane, Edward J. Plichta. 
Patent No: 4,983,476—Issued 01/08/91.

94. Title: Null Offset Voltage Compensation for Operational Amplifiers. 
Inventor: Lawrence R. Groehl. 
Patent No: 4,983,926—Issued 01/08/91.

95. Title: Method of Smoothing Pattered Transparent Electrode Stripes in Thin Film Electroluminescent Display Panel Manufactured. 
Patent No: 4,988,875—Issued 01/22/91.

96. Title: Miniature Perforated Electrode and Method of Making. 
Inventor: Charles W. Walker, Jr. 

97. Title: Method of Making a Transducer From a Boule of Lithium Tetraborate & Transducer So Made. 
Patent No: 4,990,818—Issued 02/05/91.

98. Title: High Resolution, Wide Band Chirp-Z Signal Analyzer. 
Inventors: William J. Skudera, Jr., Charles E. Konig. 
Patent No: 4,994,740—Issued 02/19/91.

99. Title: Acoustic Charge Transport Processor. 
Inventor: Arthur Ballato. 
Patent No: 4,994,772—Issued 02/19/91.

100. Title: Enhanced Magnetic Field Within Enclosed Cylindrical Cavity. 
Inventors: Herbert A. Leupold, Ernest Potenziani, Ill. 
Patent No: 4,994,777—Issued 02/19/91.

101. Title: Adjustable Twister. 
Inventor: Herbert A. Leupold. 
Patent No: 4,994,778—Issued 02/19/91.

102. Title: SAW Transducer With Improved Bus-Barrier Design. 
Inventors: Elio A. Mariani, Clinton S. Hartmann. 
Patent No: 4,999,535—Issued 03/12/91.

103. Title: Method of Making a Cathode From Tungsten & Iridium Powders Using a Reaction Product From Reacting A Group III A Metal With Barium Peroxide As An Impregnant. 
Inventors: Louis E. Branovich, Donald W. Eckart, Bernard Smith, Gerald L. Freeman. 
Patent No: 5,007,874—Issued 04/16/91.

104. Title: High Temperature Rechargeable Molten Salt Cell. 
Patent No: 5,011,750—Issued 04/30/91.

105. Title: Multicolor Infrared Photodetector. 
Inventor: Kwong-Kit Choi. 
Patent No: 5,013,918—Issued 05/07/91.

106. Title: Triangular Section Permanent Magnet Structure. 
Inventor: Herbert A. Leupold. 
Patent No: 5,014,028—Issued 05/07/91.

107. Title: Method of Making a Long Life High Current Density Cathode From Aluminum Oxide and Tungsten Oxide Powders. 
Inventors: Louis E. Branovich, Gerald L. Freeman, Donald W. Eckarat, Bernard Smith. 

108. Title: Permanent Magnet Field Sources of Radial Orientation. 
Inventors: Herbert A. Leupold, Ernest Potenziani, Ill. 
Patent No: 5,028,902—Issued 07/02/91.

109. Title: High Power Photo-conductor Bulk GAAS Switch. 
Patent No: 5,028,971—Issued 07/02/91.

110. Title: Electron Paramagnetic Resonance Instrument With Superconductive Cavity. 
Inventor: Louis J. Jasper, Jr. 

111. Title: Infrared Hot-Electron Transistor. 
Inventor: Kwong-Kit Choi. 

112. Title: Permanent Magnet Field Sources of Conical Orientation. 
Inventors: Herbert A. Leupold, Ernest Potenziani, Ill. 

113. Title: High Temperature Rechargeable Molten Salt Battery. 
Patent No: 5,035,963—Issued 07/30/91.

Inventor: Herbert A. Leupold. 
Patent No: 5,041,419—Issued 08/20/91.
115. Title: Method of Sensing Contamination In the Atmosphere.发明人: John R. Vig.申请号: 5,042,288—发布日期08/27/91。


118. Title: Open Cryogenic Microwave Test Chamber.发明人: Thomas E. Kosciica, Richard W. Babitt, William C. Drach.申请号: 5,052,183—发布日期10/01/91。


120. Title: Low Cost SAW Packaging Technique.发明人: Elio A. Mariani.申请号: 5,059,846—发布日期10/22/91。

121. Title: Fabrication of Permanent Magnet Toroidal Rings.发明人: Herbert A. Leupold.申请号: 5,063,004—发布日期11/05/91。

122. Title: Periodic Permanent Magnet Structure With Increased Useful Field.发明人: John P. Clarke.再发布号: Ra.33,736—发布日期11/05/91。

123. Title: Narrow Band Microstrip Isolator.发明人: Richard W. Babitt, Adam Rachlin, Thomas E. Kosciica.申请号: 5,068,827—发布日期11/28/91。

124. Title: Dipole For Magnetic Field Compensation.发明人: Herbert A. Leupold.申请号: 5,072,204—发布日期12/10/91。

125. Title: Optical Control of a Microwave Switch.发明人: Dana J. Sturzebecher, Arthur Paolella.申请号: 5,073,717—发布日期12/17/91。

126. Title: Optical Control of a Microwave Switch.发明人: Arthur Paolella。申请号: 5,073,713—发布日期12/18/91。

127. Title: Method of Making an Improved Scandate Cathode.发明人: Louis E. Branovich, Donald W. Eckart, Gerard L. Freeman, Bernard Smith.申请号: 5,074,818—发布日期12/24/91。

128. Title: Variable Inverted Microstrip Coax Test Fixture.发明人: Richard W. Babitt, Thomas E. Kosciica, Adam Rachline.申请号: 5,075,560—发布日期12/24/91。

129. Title: Enhanced Magnetic Field Within Enclosed Annular Cavity.发明人: Herbert A. Leupold, Ernest Potenziani, II.申请号: 5,075,662—发布日期12/24/91。

130. Title: Stepped Magnetic Field Source.发明人: Herbert A. Leupold.申请号: 5,084,690—发布日期01/28/92。

131. Title: Optical Control Circuit For a Microwave Monolithic Integrated Circuit.发明人: Arthur Paolella.申请号: 5,086,281—发布日期02/04/92。

132. Title: Method of Preparing A Lumbered Quartz Bar For Sweeping and Then Sweeping Said Lumbered Quartz Bar.发明人: John G. Quattler.申请号: 5,086,549—发布日期02/11/92。

133. Title: High Temperature Molten Salt Bipolar Stacked Module Battery.发明人: Edward J. Plichta, Wishwender K. Behl.申请号: 5,098,806—发布日期03/24/92。

134. Title: Constant Gap Cladded Twister.发明人: Herbert A. Leupold.申请号: 5,099,217—发布日期03/24/92。

135. Title: Drop-in Magnetically Turnable Microstrip Bandpass Filter.发明人: Richard W. Babitt, Adam Rachlin, Lothar Windinger.申请号: 5,101,182—发布日期03/31/92。

136. Title: High-Field, Permanent Magnet Flux Source.发明人: Herbert A. Leupold.申请号: 5,103,200—发布日期04/07/92。

137. Title: Magnetic Cladding For Use In Periodic Permanent Magnet Stacks.发明人: Herbert A. Leupold.申请号: 5,107,238—发布日期04/21/92。

138. Title: Method of Depositing A Superconducting Film By Electroplating.发明人: Arthur Tauber, Robert D. Finnegan, Michelle A. Dornath Mohr, Frank A. McBride.申请号: 5,110,767—发布日期05/05/92。

139. Title: SAW Slanted Array Correlator With Amplitude Error Compensating Polymer Reflective Array Grating.发明人: Elio A. Mariani.申请号: 5,113,135—发布日期05/12/92。

140. Title: Critical Field and Continuity Testing Method and Device for Superconducting Materials Using the Change in Internal Area of a Superconducting Loop.发明人: Herbert A. Leupold.申请号: 5,113,163—发布日期05/12/92。

141. Title: Adjustable Magnetic Field Superconducting Solenoid.发明人: Herbert A. Leupold.申请号: 5,114,432—发布日期05/12/92。

142. Title: Electrode For Use In A High Temperature Rechargeable Molten Salt Battery and Method of Making Said Electrode.发明人: Edward J. Plichta, Wishwender K. Behl.申请号: 5,114,432—发布日期05/12/92。

143. Title: Method of Preparing a Scandate Cathode By Impregnating a Forus Tungsten Billet with BA3AL206 Coating the Top Surface With a Mixture of SC5W012, SC2(W04)3, and Win A 1:3:2 Mole Ratio, and Heating IN.发明人: Louis E. Branovich, Gerald L. Freeman, Donald W. Eckart.申请号: 5,114,742—发布日期05/19/92。

144. Title: High Temperature Molten Salt Electrochemical Cell.发明人: Wishwender K. Behl, Edward J. Plichta.申请号: 5,114,805—发布日期05/19/92。

145. Title: Microwave Oscillator Using A Ring Resonator and Operable As A Remote Temperature Sensor.发明人: Michael Cummings, Roland Cedotte, Jr., Adam Rachlin.申请号: 5,115,210—发布日期05/19/92。

146. Title: Simplified Clock Distribution In Electronic Systems.发明人: Douglas C. Johnson, Arnold Bard, Patrick F. McHugh.申请号: 5,120,980—发布日期06/09/92。

147. Title: Hemispherical Cladding For Permanent Magnet Solenoids.发明人: Herbert A. Leupold.申请号: 5,126,713—发布日期06/30/92。
All written statements must be postmarked by May 10, 1993, to become listed at the end of this announcement.

NSWCD is relocating personnel positions and programs from the NSWC White Oak Detachment in Silver Spring, Maryland; the NSWC Coastal Systems Station in Panama City, Florida; and the Naval Command, Control and Oceanic Surveillance Center in San Diego, California. Personnel and programs will not be relocated from the Naval Undersea Warfare Center in New London, Connecticut, as originally proposed in the Notice of Intent to Prepare an EIS [57 FR 20256 (May 12, 1992)]. This relocation will implement requirements stemming from the Defense Base Closure and Realignment Act of 1990. The relocation includes: Upgrading the sewage treatment plant to accommodate the increase in the workforce at NSWCD, the construction and operation of a Consolidation Research, Development, Test and Evaluation Laboratory; the renovation of space in a number of existing buildings; and improvements to B Gate at U.S. Route 201. The action involves relocation of approximately 900 personnel positions and their families (approximately 2,113 people).

Additional information concerning this notice may be obtained by contacting Mr. Larry Chernikoff (Code 20A), Chesapeake Division, Naval Facilities Engineering Command, 901 M Street, SE., Building 212, Washington, DC 20374-5018, telephone: (202) 433-3367.

Dated: April 1, 1993.

Michael P. Runnel,
LCDR, JAGC, USN, Federal Register Liaison Officer.

Public Hearing for the Draft Supplemental Environmental Impact Statement for Element II, Breakwater Pier, Naval Station Everett, Everett, WA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Supplemental Environmental Impact Statement (DSEIS) for Element II of the DEIS for Base Realignment of Dahlgren Division, Naval Surface Warfare Center, Dahlgren, VA.

The DEIS has been distributed to various Federal, State and local government agencies and elected officials, special interest groups, and libraries. A limited number of single copies are available at the address listed at the end of this notice.

The Department of the Navy will hold a public hearing to inform the public of the DEIS findings and to solicit comments. It will be held on April 28, 1993, at 7:30 p.m. at the King George High School Auditorium, King George, Virginia.

The public hearing will be conducted by the Navy. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by May 24, 1993, to become part of the official record.

A public hearing to inform the public of the DSEIS findings and to solicit comments will be held on April 26, 1993, at 7 p.m., in the Glenn Stevens Hearing Room, Stafford County Administration Building, 3000 Rockefeller Avenue, Everett, Washington.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by May 24, 1993, to become part of the official record.
Public Hearings for the Draft Environmental Impact Statement for Proposed Facilities Development and Relocation of Navy Activities to the Territory of Guam from the Republic of the Philippines

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500-1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy, in cooperation with the U.S. Air Force and U.S. Army Corps of Engineers, has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed facilities development and relocation of Navy activities to the Territory of Guam from the Republic of the Philippines.

The DEIS has been distributed to various federal, territory, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

Two public hearings to inform the public of the DEIS findings and to solicit comments will be held on April 20, 1993; one beginning at 2 p.m., and a second at 7 p.m., in the Governor's Cabinet Conference Room at the Executive Building in Adelup, Guam.

The public hearing will be conducted by the Navy, Federal, territory, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement.

All written statements must be postmarked by May 18, 1993, to become part of the official record.

U.S. Navy facilities in the Philippines were closed in 1992. This DEIS addresses the relocation of activities from the Philippines and the development of facilities at Navy and Air Force installations on Guam. Approximately 1,380 military billets and 1,450 dependents will ultimately be relocated to Guam. There will be several changes in military activities on Guam because of the relocation of various commands from the Philippines. To accommodate these new activities, a total of 25 military construction projects are proposed: 19 located in the Apra Harbor area and the remainder at Andersen Air Force Base (AFB), Naval Magazine, and Nimitz Hill. Facilities at Andersen AFB include a hangar/apron/wash rack and renovation of bachelor quarters. In the Apra Harbor Complex, projects include 300 family housing units, Orote Power Plant expansion, Apra Harbor Sewage Treatment Plant modifications, gantry crane and rails, waterfront utilities, and various administrative facilities. Missile magazines and an inert storehouse are proposed at Naval Magazine Guam.

Additional information concerning this notice may be obtained by contacting: Mr. Stanley Uehara (Code 3&1S-AE-M), Engineering Command, Pearl Harbor, Hawaii 96860-7300, telephone (808) 471-9338.

Dated: April 1, 1993.

Michael P. Rummel,
LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-7983 Filed 4-5-93; 8:45 am]
BILLING CODE 3510-AE-M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: April 26-30, 1993, from 9 a.m. to approximately 5 p.m. each day.

ADDRESS: The meeting will be held at the Ramada Hotel Old Town, 901 North Fairfax Street, Alexandria, Virginia, 22314, (703) 683-6000.


SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, Title V, Pub. L. 100–297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

Under section 5342(b)(2) of the Indian Education Act, the Council is directed to review applications for assistance and to make recommendations to the Secretary of Education with respect to their approval. The duly authorized Proposal Review Committee of the Council will meet in closed session starting at approximately 9 a.m. and will end at approximately 5 p.m. each day during the proposal review session. The agenda will include reviewing grant applications for assistance for programs authorized by subparts 1, 2, and 3 of the Indian Education Act of 1988 including applications for (1) Discretionary grants to Indian Controlled Schools; (2) Educational Services for Indian Children; and (3) Educational Services for Indian Adults.

The discussion during the review process may disclose sensitive information about applicants, qualifications of proposed staff, funding level requests and the names and comments of expert reviewers. Such discussions would disclose commercial or financial information obtained from a person, and is privileged or confidential and would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (4) and (6) of section 552(b)(c) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)). Records are kept of all Council proceedings, and are available for public inspection. A summary of activities of this closed meeting which are informative to the public consistent with the policy of title 5 U.S.C. 552b shall be available for public inspection.
Within 14 days of the meeting at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 9 a.m. to 4:30 p.m. Monday through Friday, except holidays.


Robert K. Chiiego,
Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–7906 Filed 4–5–93; 8:45 am] BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY
Office of Environmental Restoration and Waste Management

Publication of Schedule for Submitting Plans for Treating Mixed Waste Generated or Stored at Each Site as Required by the Federal Facility Compliance Act of 1992

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: Pursuant to section 105 of the Federal Facility Compliance Act of 1992, the Department of Energy (DOE) is publishing this schedule for submitting Plans for Treating Mixed Waste for each facility at which DOE generates or stores mixed waste. DOE proposes to prepare two interim versions of the plan required by the Act for each of its sites to facilitate discussions among States and other interested parties. DOE also commits to begin working with the regulatory agencies as soon as possible and throughout the process on the plans.

DATES: Written comments on the schedule and other information discussed here should be provided no later than May 21, 1993.


SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this Notice is to fulfill the requirement in section 3021(c)(1) of the Resource and Conservation Recovery Act (RCRA), as amended on October 6, 1992 by section 105(a) of the Federal Facility Compliance Act of 1992 (Pub. L. 102–386) (the Act). This section requires DOE to publish a schedule for submitting plans for each facility at which DOE generates or stores mixed waste. The plans must describe the development of treatment capacities and technologies for treating the site’s mixed waste (hereafter referred to as site treatment plans or plans). These plans, required by RCRA section 3021(b), as amended by the Act, must be submitted to the State in which the site is located or to the U.S. Environmental Protection Agency (EPA) for review and approval, approval with modification, or disapproval.

The site treatment plans will address DOE’s compliance with the RCRA land disposal restrictions (LDR) for mixed waste, which is waste containing both a hazardous waste subject to RCRA, and source, special nuclear or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). LDR provisions require treatment of hazardous waste (including mixed waste) to certain standards prior to land disposal and prohibit storage of LDR wastes that do not meet LDR standards, except for the purposes of accumulating sufficient quantities to facilitate proper recovery, treatment, and disposal of the waste. DOE is currently storing mixed waste because the treatment capacity for such wastes is not adequate, either at the DOE sites or in the commercial sector.

In preparing this Notice, DOE has discussed the proposed process for preparing the plans and the submission schedule with the EPA and many of the States in which its facilities are located. DOE is inviting comment on the process for developing the plans, the proposed schedule, and other issues. DOE will proceed with the approach and schedule discussed herein unless significant comments received on the Notice indicate that modifications are appropriate. In that event, DOE would publish a notice in the Federal Register announcing its intent to revise the schedule by June 21, 1993 and identifying a date for publishing a revised schedule.

II. Relevant Provisions of the Federal Facility Compliance Act

Section 102(a)(3) of the Act waives sovereign immunity for Federal facilities for fines and penalties for violations of RCRA, State, interstate, and local hazardous and solid waste management requirements. However, for a period of three years following enactment, the Act delays the waiver for violations of the LDR storage prohibition, RCRA section 3004(j), involving mixed waste at DOE facilities. The delay, however, is contingent upon the management of the waste being in compliance with all other applicable requirements. The waiver is not delayed for DOE facilities that are subject to an existing agreement, permit, or administrative or judicial order addressing compliance with LDR storage prohibition for mixed wastes.

The Act further delays the waiver of sovereign immunity beyond the three year period at a facility if DOE is in compliance with an approved plan for developing treatment capacity and technologies for mixed waste generated or stored at the facility and an order requiring compliance with the plan. Section 3 21(b) of RCRA, as amended by the Act, sets out the required content for the plans, which must cover all mixed waste at the site, regardless of the time of generation, and the process by which such plans must be approved. For mixed waste for which identified treatment technologies exist, the plan must provide a schedule for submitting permit applications, entering into contracts, initiating construction, conducting systems testing, starting operations, and processing mixed wastes. For mixed waste without an identified treatment technology, the plan must include a schedule for identifying and developing technologies, identifying the funding requirements for research and development, submitting treatability study exemptions, and submitting research and development permit applications. In cases where DOE proposes radionuclide separation, the plan must also include an estimate of the volume of waste generated by radionuclide separation, an estimate of the volume of waste that would exist without such separation, and cost estimates and underlying assumptions. Section 3021(b)(1)(C) of RCRA states that the plans may provide for centralized, regional or on-site treatment of mixed waste, or any combination thereof.

DOE is to submit the plans to either the State or EPA. The Act requires the plan to be submitted to the State in which the facility is located if (1) the State has authority under State law to prohibit land disposal of untreated mixed waste and (2) EPA has authorized the State to regulate the hazardous components of mixed waste under RCRA. If the State does not meet these criteria, the plan must be submitted to EPA. Within six months after DOE submits the plan, EPA must determine if the plan is feasible, require a receiving agency (the State or EPA) to solicit and consider public comments, and, if necessary, approve, approve with modifications, or disapprove the plan. In making its...
determination, the approving agency must consult with EPA and any State(s) in which a facility affected by the plan is located. Upon approving a plan, the agency must issue an order requiring compliance with the approved plan. The Act provides an alternative to submitting a plan. The State in which a DOE facility is located may waive the plan requirement if the State enters into an agreement with DOE addressing compliance with the LDR storage prohibition for mixed waste at the eligible facility, and issues an order requiring compliance with that agreement.

In addition, a site is not required to prepare a plan if it is subject to a permit establishing a schedule for treatment of its mixed wastes, or an existing agreement or order which governs mixed waste treatment, to which the State is a party.

Section 3021(a) of RCRA, as amended by the Act, requires DOE to submit a national inventory report to EPA and the governor of each State in which DOE stores or generates mixed waste within 180 days of the date of enactment. This national inventory report must provide an inventory of DOE’s mixed waste and an inventory of DOE’s treatment capacities and technologies for treating the mixed waste. The information contained in this report will be used by DOE as a starting point in developing the treatment plans.

III. DOE Sites That Generate or Store Mixed Waste

The Act requires that a plan be submitted for each site where DOE generates or stores mixed waste. Table 1 lists the sites where DOE has identified it as currently generating or storing mixed waste. The list also contains some sites not now generating or storing mixed waste, but that are expected to generate mixed waste within the next five years; these sites are identified as such in Table 1.

As DOE continues to review waste streams and as operations change, additional sites may be identified. For example, some sites may become mixed waste generators in the future as a result of restoration or decommissioning and decontamination activities. In addition, further assessment may show that some sites included below do not generate mixed waste.

Table 1 also identifies whether the plan would be submitted to the State or to EPA, based on the current status of State laws and RCRA authorizations under the criteria established in section 3021(b)(2) of RCRA.

**Table 1**—Sites at Which DOE Generates or Stores Mixed Waste (or May Generate Within the Next 5 Years)

<table>
<thead>
<tr>
<th>Facility</th>
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<td>Puget Sound Naval Shipyard</td>
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1 Denotes a site that is not currently generating or storing mixed waste but may generate or store mixed waste within the next five years.

The Act defines mixed waste as wastes containing both hazardous waste as defined in RCRA and source, special...
nuclear, or byproduct material subject to the Atomic Energy Act (AEA) of 1954 (42 U.S.C. 2011 et seq.). The terms "source, special nuclear, or byproduct material" are defined in the AEA, and the term "byproduct" is further clarified in 10 CFR 61.3. The term "mixed waste" as defined in the Act does not include all hazardous waste containing radionuclides. For example, it does not include hazardous waste containing naturally occurring or accelerator-produced radioactive material, generally referred to as NARM. Hazardous wastes containing radioactive material such as radium and its decay products, which are naturally occurring, are not "mixed waste" under the Act. Nor are wastes containing materials made radioactive in an accelerator used for particle physics research. These wastes are regulated as hazardous waste under RCRA, and the radioactive component is controlled under DOE Orders, but are not subject to the requirements in the Act for mixed waste, including the requirement to prepare a plan. DOE has small quantities of this type of waste at a few research facilities, such as Stanford Linear Accelerator Center in California and the Fermi National Accelerator Laboratory in Illinois, that generate only NARM-containing hazardous waste that is not "mixed waste."

Although site treatment plans are not required for such waste streams or for a site that produces only wastes containing NARM or radionuclides other than source, special nuclear or byproduct materials, DOE intends to consider such wastes in its planning efforts to ensure there is adequate capacity to treat the wastes to applicable standards. In addition, some DOE facilities, such as Los Alamos National Laboratory, generate hazardous waste containing NARM as well as mixed waste. These wastes are managed in the same storage and treatment facilities and are essentially commingled. In such a case, the site treatment plan will generally include both types of waste.

Most of the sites in Table 1 are DOE-owned facilities, but some sites are included for other reasons. For example, the legislative history of the Act states that joint DOE and Department of Navy efforts conducted under E.O. 12344 (42 U.S.C. 7158) are also subject to requirements in the Act pertaining to mixed waste. Therefore, Naval Shipyards are included where mixed waste may be generated and stored from work supporting the nuclear propulsion plants of ships. The Table also includes sites which, while not DOE sites, conduct or have conducted activities under contract to DOE. As required by the contract, DOE will ultimately be responsible for mixed wastes generated as a result of the DOE-sponsored activities. General Atomics and Battelle Columbus Laboratories Nuclear Decommissioning Project are examples of such sites. In addition, the Table includes sites in the Formerly Utilized Site Remedial Action Program (FUSRAP), where DOE is undertaking cleanup activity; these are the Colónie Interim Storage Site and the Middlesex Sampling Plant.

As illustrated by Table 1, DOE anticipates the plans will be submitted to the States, rather than EPA, for approval at most sites, since the majority of States have or soon will have authority under RCRA to regulate the hazardous components of mixed waste and authority under state law to prohibit land disposal of untreated mixed wastes. All of the plans for the DOE sites with significant amounts of mixed waste are located in States with the appropriate authorities to approve plans.

IV. General Principles Underlying the Process for Developing Site Treatment Plans

In developing this Notice, DOE has sought and received input on the schedule and other aspects of the plan development process from a number of States and from EPA in several forums. Many discussions have taken place at the site level. A number of DOE sites have held discussions with their State regulators to discuss DOE's proposed approach and the State's views and preferences on the process for preparing the plans, the schedules for submitting plans, and the interactions among the States, EPA, and DOE while the plans are being developed.

DOE has also received input from States, EPA and other interested parties on a national level. On December 3, 1992, DOE published a draft "Strategy for the Development of a National Compliance Plan (NCP) for DOE Mixed Waste" (57 FR 57170) for public comment, and also held a meeting with EPA and the States in December 1992 to discuss the NCP proposal. At that time, DOE proposed in the draft NCP Strategy to prepare an integrated national plan to ensure the development of adequate mixed waste treatment capacity throughout the DOE complex and establish schedules for bringing needed facilities into operation; DOE's proposed site treatment plans would have been developed in conjunction with and be based on the NCP. DOE will be publishing a summary of comments it received on the draft NCP strategy and a detailed response in the Federal Register in the near future.

Based on comments received, DOE has revised its approach from that described in the NCP Strategy. The process DOE intends to follow in developing the plans, and the schedule for submitting the plans, is intended to accommodate States' expressed preference to begin discussions on the plans as soon as possible in order to provide opportunity for early deliberation on technology, capacity, technology development and equity concerns. Specifically:

• The process accommodates the States' preference to begin discussions on the plans immediately, or as soon as practicable. The process will ensure that States and EPA are provided with information and opportunities for input throughout the development of the plans.

• The process provides time and opportunity for necessary discussions among States and DOE sites. Some States have expressed concerns that the distribution of DOE mixed waste treatment facilities must be equitable and have indicated they plan to discuss equity issues with other States, with support and involvement from EPA, the public, and DOE. The schedule provides time for these discussions to take place and allows the States and others to work from comparable information on all sites.

• The schedule reflects that some sites will need more time than others to identify treatment alternatives and prepare a plan for their LDR mixed wastes. For example, some sites with significant quantities of waste have already committed to constructing specific treatment facilities for many of their waste streams and have identified technology options for others. Other sites will need more time to identify appropriate treatment options. The schedule allows the sites to propose their plans as early in the process as they can and provides an opportunity to coordinate final plans with the final plans at other DOE sites.

• The schedule allows for discussions of technical and policy issues associated with the plans at both the site and the national level throughout the process. The goal is to resolve as many issues as possible before the final proposed plans are submitted to the States and EPA.

• The schedule also reflects the need to closely coordinate the site treatment plans with DOE's ongoing efforts to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement (PEIS). The PEIS process will provide States, EPA, the public, and DOE with an
understanding of the environmental impacts of a wide range of strategic alternatives for configuration of DOE's treatment, storage, and disposal facilities nationwide.

- The schedule is designed with a goal of having all plans in place and orders issued by October 6, 1995.

V. Description of the Process and the Schedule

The development of site treatment plans will be a complex task involving all levels of the DOE organization, and a DOE site's submittal of information or a plan as discussed below reflects this involvement. DOE Field and Site Offices will have the lead role in developing the plans at each site and working with the regulatory agencies and the local public. DOE Headquarters will also be closely involved in the development of the plans and will coordinate among the sites and with the States and the public to ensure the plans are consistent with the needs, capabilities, and requirements for the DOE complex.

A. Sites Will Begin Providing Information to Their States, or EPA, Early in the Process and Will Work With Their Regulators and the Public Throughout the Development of the Plans

In response to the preference expressed by several States, sites will meet as soon as possible with the regulatory agency that will be approving their plans to discuss general site information on waste streams, technologies, treatment facilities and other information in the Mixed Waste Inventory Reports. Each site will also define with the regulatory agency the nature and frequency of interactions among the DOE site, the regulatory agency, and others during the preparation of the plan. For example, some States may want frequent meetings with the site to keep abreast of progress and issues. Each site will work with its regulatory agency or agencies to establish a mechanism that reflects their needs and preferences.

In conjunction with the development of the plans, DOE would also like to work with the State or EPA to establish the provisions of the order for the site to be issued after the plan is approved. The order will provide the framework for implementing commitments in the plan and will define the responsibilities and relationship of the parties over the long term.

DOE also believes that the public should be informed and involved in the development of site treatment plans. The Act requires the regulatory agency to provide for public participation during its review of the plan that DOE submits. The process DOE has developed, however, offers additional opportunities for involving the public and keeping them informed of progress and options being considered for treating mixed waste. DOE sites will work with the regulatory agency to develop a public involvement approach for each site.

B. DOE Sites Will Provide Site Treatment Plans in Three Phases During the Development Process: A "Conceptual Plan" by October 1993, a "Draft Plan" no Later Than August 1994, and a "Final Proposed Plan" no Later Than February 1995

"Conceptual Plan." DOE will submit a plan for review and approval, DOE intends to provide two interim versions of the plan to facilitate discussions between the site and the regulatory agency and among the States, EPA, and other interested parties on technical and equity issues. The interim plans will also facilitate information exchange among the sites and regulatory agencies and help identify common technical problems and needs. The interim plans will provide information about the technology needs, existing and planned treatment facilities, and treatment options, including potential options for treating off-site wastes, with each version containing increasingly complete and detailed information.

The interim plans will be provided to the regulatory agency that will be approving the final proposed plan for its review and will serve as a vehicle to receive State and EPA input and as a basis for considering national issues. Interim plans will also be available to other States or the public upon request.

These early plans afford an opportunity for significant discussions among the parties on equity issues based on the information provided in each version of the plan. The results of those discussions will be reflected in the ensuing plan.

DOE also intends to prepare summary documents of the conceptual, draft, and final plans to provide a national picture of DOE's technology needs and possible options for treatment of its mixed waste. The summaries will be provided to all States and made available to other interested parties.

C. Each DOE Site Will Prepare a "Conceptual Site Treatment Plan" by October 1993

The purpose of the conceptual plan is to provide as much information as possible on treatment technology needs and treatment capacity for each site's mixed waste. The conceptual plan will also provide a preliminary identification of options for treating the site's waste, which may include on-site, commercial, and off-site facilities, as well as potential barriers to an option, if known.

The detail and completeness of information provided in the conceptual plan are expected to vary significantly from site to site. At some sites, the information may be very limited; at other sites with identified existing or planned treatment capacity for many of their mixed wastes, the conceptual plan will contain more specific information.

The intent of the conceptual plan, however, is to provide a starting point for discussion. Each site will provide the best information it can by October 1993. While sites will be providing some information to the regulatory agencies before the conceptual plan is prepared, the conceptual plan serves as a formal means of capturing the available information for all DOE sites at one point in time. The conceptual plans provide an early opportunity to see how the information from DOE's national inventory reports is translated into site-specific treatment approaches.

D. Each Site Will Submit a "Draft Site Treatment Plan" no Later Than August 1994

The draft site treatment plan will be a draft version of the plan required by the Act and will identify the current preferred option for treating each site's mixed wastes. The draft plan will identify specific treatment facilities for treating mixed wastes, including the location of the facilities, and will propose schedules as required by the Act. The proposals in the draft plan will reflect the results of discussions among States, EPA, DOE and others based on the conceptual plans.

While DOE commits to providing a draft plan for each site no later than August 1994, DOE intends that sites will provide their States or EPA with a draft plan as soon as they are able to do so. For example, a large site with planned treatment capacity for the majority of its wastes, such as a site operating under an existing LDR agreement, may be able to provide its draft plan earlier than August 1994 and may even be able to merge its conceptual and draft plans. A site with small quantities of wastes and few waste streams may also be able to
complete its draft plan earlier if, for example, it identifies a commercial facility that can accept its wastes.

E. Each DOE Site Will Submit the "Final Proposed Plan" Required by the Act no Later Than February 1995 to the Appropriate Agency for Review and Approval

It is DOE's intent in adopting a multi-stage process that the majority of technical, equity, and other issues will be satisfactorily addressed by the time the final proposed site treatment plan is submitted to the appropriate regulatory agency for review and approval. DOE also anticipates that discussions on the provisions of the order will have been completed or nearly completed. DOE believes, therefore, that submission of final plans by February 1995 will allow sufficient time for the regulatory agencies to review and approve the plans and issue orders to implement the plans by October 1995.

The February 1995 deadline does not preclude sites from submitting plans prior to that date. However, DOE believes it is important that any plan submitted earlier should not preclude full participation by the site and State in equity discussions or restrict possible future decisions to treat off-site waste.

F. Alternative Approach Considered

An alternative approach DOE considered was to have each site prepare only one site treatment plan for State or EPA approval on a staggered schedule over the next three years. Sites further along in identifying needed treatment technologies and facilities (generally some of the major DOE sites) would submit their plans earlier, while sites not as far along would submit their plans later. However, there are significant drawbacks to this approach.

If DOE sites were to submit their plans on a staggered schedule, the sites most likely to be ready to submit plans earlier in the process would be large DOE sites that already have existing mixed waste treatment facilities or commitments to construct facilities on site. Some other sites, particularly smaller sites, require more time to identify appropriate treatment technologies and related engineering requirements for their waste streams, and to identify and evaluate potential on-site and off-site treatment facility options. While DOE's national mixed waste inventory report provides a starting point, these sites need to conduct additional technical evaluations to identify appropriate technological approaches for their wastes before they can identify the specific capacity and schedules required by the Act.

If some DOE sites submit site treatment plans early in the process, which are then approved, other sites not as far along in the process and their host States will not have had adequate time to evaluate whether to approach those sites and their States concerning acceptance of their waste. Thus, sites submitting their plans early could commit to technologies and schedules without considering the need to accommodate off-site waste. For example, a treatment facility may require some modification in design or capacity in order to accept the other site's waste. Consequently, options to accept off-site waste may effectively be precluded without an adequate opportunity for all sites and States to participate equally in the planning process.

DOE believes it should evaluate the feasibility of regional and central treatment facilities, as allowed for in the Act, since it is not likely to be feasible to treat all wastes on-site at each of the 50 sites generating mixed waste. DOE recognizes, however, that States have equity concerns related to the potential siting of such facilities. A staggered schedule for submittal of plans would make it difficult for the States to discuss equity issues because the States would not have the necessary information on their sites at the same time.

In addition, a staggered approach makes it more difficult to identify common technology development needs among sites and to determine with regulators which DOE sites or sites are best suited to undertake specific efforts on behalf of other sites. Since developing the necessary treatment technologies for mixed waste will be an expensive effort, DOE wants to minimize duplication of efforts and undertake the work in a cost-effective manner. The first DOE sites to submit treatment plans may not necessarily be the best sites to perform the technology development work for each mixed waste stream. However, it would be difficult for those sites to demonstrate to their regulators that another site can undertake the technology development work if the other site has not yet submitted its plan.

VI. Discussion of Special Circumstances

A. Sites With Existing RCRA LDR Agreements That Include the State

Section 3021(b)(1)(A)(ii) of RCRA, as amended by the Act, provides that a facility is not required to prepare a plan if it is subject to an existing agreement or order with a State which governs mixed waste treatment. The Hanford Site is the only DOE site with such an agreement addressing the site's mixed waste inventory. (Other DOE sites have existing agreements with the States that address wastes resulting from environmental restoration activities, discussed in section VLD of this Notice.) At the Hanford Site, DOE, EPA and the State of Washington entered into a Tri-Party Agreement that contains requirements pertaining to mixed waste treatment. The May 17, 1989, Hanford Agreement was amended on September 24, 1990, to include LDR compliance. Under the agreement, the Hanford Site submitted an LDR Plan for Mixed Wastes and updates the LDR Plan annually.

DOE believes the Hanford Site is not required to submit a site treatment plan. DOE has discussed this issue with the State and EPA and has requested their confirmation that a plan is not required. The site received EPA concurrence with this view on March 18, 1993, and is awaiting a response from the State. If a plan is not required, the Hanford Site will work with other sites in developing their site plans and will participate in site and State discussions.

B. Sites With Existing RCRA LDR Agreements With EPA

DOE currently has four LDR agreements with EPA that require the development of treatment capacity for mixed waste:

- DOE has executed two LDR Agreements for mixed waste for the Rocky Flats Plant in Colorado to date. The first LDR Agreement, executed on September 19, 1989, among DOE, EPA and the State, was superseded by a second LDR agreement with EPA on May 10, 1991. Under the current Agreement, DOE submitted a Comprehensive Treatment and Management Plan (CTMP) in June 1992 to EPA for review and approval. The CTMP was also provided to the State for information.
- DOE executed an LDR Agreement with EPA for the Oak Ridge Reservation in Tennessee on June 12, 1992. The Agreement requires a treatment plan for mixed wastes with identified existing treatment facilities, submitted on December 12, 1992; a treatment strategy for wastes without identified existing
mixed waste may be generated by future restoration activities at Ames).

The practical and cost-effective options for treating wastes are likely to be different at sites with very small amounts of mixed wastes than at large sites. In developing its plans for small sites, DOE will explore the feasibility of on-site treatment options such as bench scale units and mobile treatment units. Off-site options such as use of commercial facilities and shipping to another DOE facility with appropriate existing or planned technology will also be evaluated.

For sites with small quantities of mixed waste, the conceptual and draft plans will identify the type of treatment required and the treatment options. If treatment at another DOE facility is ultimately proposed as DOE’s preferred option after consideration of equity issues, the final proposed plan would identify the site and facility or facilities where the waste will be sent, while the plan for the site receiving the waste would ensure the capacity and design of its treatment facility was adequate to accommodate the site’s mixed waste.

**D. Environmental Restoration Sites**

Table 1 includes environmental restoration sites that currently generate or are expected to generate mixed waste within the next five years. In some cases, such as the Savannah River Site, restoration activities comprise a portion of the waste generation activity at the site. In others, such as Colonie Interim Storage Site, a FUSRAP site, the entire site is undergoing restoration, and all the waste generated results from restoration activities.

Most restoration activities are being carried out pursuant to enforceable agreements or orders. These include Interagency Agreements (IAG) under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) with the State, EPA, or with both; corrective action permits under section 3004(u) of RCRA, or orders under 3008(h) of RCRA with the State or EPA. At some sites, a combination of RCRA, CERCLA, and State authorities are used to direct the clean up.

Such restoration agreements establish a process and schedule for investigating the site, evaluating potential remedial actions, and selecting and implementing the remedial action, which must comply with environmental requirements, such as LDR. It is this process that will determine what wastes will be generated, whether they will be treated, and, if so, what treatment technology and facility will be used, as well as the schedule for implementing the remedial action. Decisions are documented in a Record of Decision (ROD) under the CERCLA process, or in equivalent documents under other authorities. The process involves regulators, as well as the public.

In many ways, the information to be provided in a plan under the Act duplicates the information that a site must develop under a CERCLA IAG or comparable agreement. If a separate site treatment plan is prepared, it is critical that it be consistent with the time frames in the agreement and reflect, rather than replace, the decisions established through the restoration process.

Each site will work with its State and with EPA to develop an approach that is appropriate for the restoration activities at the site and ensures compliance with the Act and with restoration authorities.

Issued in Washington, DC, on April 1, 1993.

Paul D. Grimm, Acting Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93-6042 Filed 4-5-93; 8:45 am]

BILLING CODE 6450-01-P

[Docket EA–94–A]

**Issuance of Amended Electricity Export Authorization**

**AGENCY:** Office of Fossil Energy, Department of Energy,

**ACTION:** Notice of issuance.

**SUMMARY:** The Office of Fossil Energy has issued an amended electricity export authorization to Central Power and Light Company.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Lisa Howe (Program Attorney) at 202–586–2900.

**SUPPLEMENTARY INFORMATION:** On March 30, 1993, the Office of Fossil Energy (FE) issued an amended electricity export authorization to Central Power and Light Company (CPL) to transmit electric energy to Mexico over five interconnections.

In considering this application the DOE reviewed the environmental impacts associated with the proposed export and determined that this action was eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Guidelines Implementing the National Environmental Policy Act of 1969 (NEPA). FE also determined that the export of electric energy to Mexico as requested by CPL, and conditioned in the ordering language, would not
adversely impact the reliability of the U.S. electric power supply system.

A copy of the export authorization is available for public inspection and copying at the Department of Energy, Room 5F-050, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Issued in Washington, DC, on March 30, 1993.

Anthony J. Como,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[Docket Nos. EA-66 and EA-66-A]

Electricity Export Authorization; Application and issuance of Temporary Order

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application and issuance of temporary order.

SUMMARY: Citizens Utilities has requested an electricity export authorization in order to assist Hydro-Quebec during a planned temporary outage of Hydro-Quebec’s Stanstead substation during September 1993. In addition, on March 31, 1993, the DOE issued a temporary order authorizing Citizens to export electric energy to Hydro-Quebec during a brief test of the facilities to be used on or about April 18, 1993.

DATES: Comments, protests or requests to intervene must be submitted on or before May 6, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.


SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

Citizens Utilities (Citizens) was issued a Presidential permit, pursuant to Executive Order No. 10485, as amended by Executive Order No. 12038, to construct, connect, operate, and maintain a 10,000 volt electric transmission facility at the United States-Canada border near Derby Line, Vermont. This electric transmission facility was constructed in order to import into the United States electric energy from Hydro-Quebec to supply Citizens’ customers in Vermont.

On March 24, 1993, Hydro-Quebec informed Citizens that it plans to install two capacitor banks at its Stanstead substation which will cause an interruption of service to Canadian customers served by the substation for approximately eight days during September 1993. Hydro-Quebec further requested that Citizens assist it by supplying electricity to these Canadian customers during the interruption. On March 31, 1993, Citizens filed an application with the Department of Energy (DOE), pursuant to section 202(e) of the Federal Power Act, to export electric energy to Hydro-Quebec to satisfy the Hydro-Quebec request. Citizens further requested immediate permission to perform a test back-feed of up to 16 megawatts (MW) for approximately one hour during the week of April 18, 1993, to assure Hydro-Quebec that the proposed export of electric power to supply the斯坦stead load is technically feasible. On March 31, 1993, in Docket EA-66, the Deputy Assistant Secretary for Fuels Programs issued a temporary order providing for testing use of these facilities in the export mode for a period not to exceed 90 minutes on or about April 18, 1993.

The request for comments in Docket EA-66-A is for the application by Citizens Utilities for use of these same facilities for export of electric energy during the planned outage in September 1993.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with: Eileen G. Richard, Citizens Utilities, High Ridge Park, Stamford, CT 06905.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE 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 petition to intervene under 18 CFR 385.214.

Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner’s interest in the ultimate outcome of the proceeding, and any conditions and limitations, or denying it must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA).

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, March 31, 1993.

Anthony J. Como,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

Federal Energy Regulatory Commission

[Docket No. EG93-34-000]

Clearfield Partners, L.P.; Correction to Notice of Application

March 31, 1993.

The caption in this proceeding, as shown on the Notice issued on March 25, 1993, (58 FR 16819, March 31, 1993), should be “Clearfield Partners, L.P.,” and not “Diamond Energy, Inc.” The notice correctly stated that Diamond Energy, Inc. was filing on behalf of its to-be-formed subsidiary, Clearfield Partners, L.P., which is the Applicant.

Lois D. Cashell,
Secretary.

[FR Doc. 93-7962 Filed 4-5-93; 8:45 am]
Office of Hearings and Appeals

Issuance of Decisions and Orders; During the Week of February 15 Through February 19, 1993

During the week of February 15 through February 19, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for exception or 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

James J. Laventon, 2/19/93, LFA-0265

On January 25, 1992, James J. Laventon filed an Appeal from a determination issued to him on January 14, 1993, by the Acting Director of the Information & Administrative Services Division (Acting Director) of the Strategic Petroleum Reserve Project Management Office of the Department of Energy (DOE). In that determination, the Acting Director denied Mr. Laventon’s request for information pursuant to the Freedom of Information Act (FOIA). Specifically, the Acting Director stated that the DOE did not have a copy of the contract responsive to Mr. Laventon’s request. In considering the Appeal, the DOE confirmed that the Acting Director following procedures which were reasonably calculated to uncover the requested contract and that it was destroyed on June 10, 1992 pursuant to the DOE’s Records Disposition Schedule. Accordingly, the DOE denied Mr. Laventon’s request.

Milton L. Loeb, 2/17/93, LFA-0265

Milton L. Loeb filed an Appeal from a denial by the Albuquerque Field Office of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Mr. Loeb challenged Albuquerque’s withholding of the computer source code of software developed by a contractor for the DOE, and its failure to address other portions of his request. The DOE determined that the requested source code was not an agency record, and ordered the Field Office to issue a supplemental determination with respect to the requested material not yet considered. Accordingly, the Appeal was granted in part and denied in part.

Request for Exception

Pioneer International, Inc., 2/16/93, LEE-0036

Pioneer International, Inc., filed a Statement of Objections to the Proposed Decision and Order (PDO) issued on December 17, 1992 tentatively denying exception relief from the requirement that the firm file the Energy Information Administration (EIA) Form EIA-782B, the “Reseller/Retailers’ Monthly Petroleum Product Sales Report.” In considering the Statement of Objections, the DOE rejected the firm’s objections to the PDO and found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. The DOE also determined that the firm did not have “clear hands” because it had failed to file the form. Accordingly, the DOE issued a Final Decision and Order determining that the exception request should be denied.

Refund Applications

Atlantic Richfield Company/Westfield Arco, 2/19/93, RR304-55

The DOE issued a Decision and Order denying two Applications for Refund in the Atlantic Richfield Company Subpart V special refund proceeding on behalf of Westfield ARCO and its owner, Mr. Steven P. Stawinski, Jr. (Case Nos. RF304-3653 and RF304-13252). In each submission, Mr. Stawinski had certified that neither he, nor any representative, had ever filed any other Applications in the ARCO proceeding. Because of these misrepresentations the DOE denied the two remaining Westfield ARCO Applications, with prejudice to a refiling. His brother, Ron Stawinski, had been a 50 percent partner in the Westfield outlet and, totally unaware of the previous submissions, had signed only the last Application. The DOE determined that Mr. Ron Stawinski was indeed eligible to seek a refund in the ARCO proceeding, and subsequently granted him a refund based on 50 percent of the purchases of ARCO refined product made by Westfield ARCO.

Shell Oil Company/Chala Enterprises, Inc., 2/16/93, RF315-7847, RF315-10215, RF315-10277

This Decision and Order considered the four Applications for Refund filed separately on behalf of Chala Enterprises, Inc. by four brothers: Salvadore, H. George, Raymond, and Richard Chala. These men were the sole stockholders of Chala Enterprises, Inc., which was dissolved after the refund period ended. Because each brother owned a 25% interest in the firm, each brother received a refund based on 25% of the total gallonage. Moreover, the firm was involved in a Chapter 7 bankruptcy proceeding when it was doing business during the refund period under the name St. George Oil

December 17, 1992, to seek a refund. Accordingly, each brother received a refund of $1,847 ($1,250 in principal and $597 in interest).

Texaco Inc./Bay Service Station, 2/18/93, RR321-122

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Bay Service Station (Bay) in the Texaco Inc. special refund proceeding. In Texaco Inc./Don Wolfe’s Texaco, (Don Wolfe’s), Kei Nakamura, the owner of Bay, was granted a principal refund of $3,638 based on 3,594,745 gallons of Texaco motor gasoline purchases. Because Coast Oil Company, a reseller of petroleum product and Bay’s supplier, purchased only 92 percent of its motor gasoline from Texaco, the volumetric amount used to compute Bay’s refund was reduced by eight percent. In the Motion for Reconsideration, the DOE found that Coast maintained separate inventory accounting and that the prices it charged Bay were based solely on the cost of Texaco product, and concluded that Mr. Nakamura should receive a refund based on the difference between Bay’s full allocable share and the principal refund he was granted in Don Wolfe’s. Consequently, Mr. Nakamura will receive an additional refund $428 ($319 principal plus $110 interest).

Texaco Inc./J.B. Parker, Dist., 2/18/93, RF321-19609

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application for Refund that was filed in the Texaco refund proceeding by J.B. Parker (Case No. RF321-5790). In the Decision, the OHA modified a prior Decision approving that Application and rescinded in part the refund that was granted to Mr. Parker. That refund was based upon the premise that Mr. Parker owned and operated his distributorship during the entire period from March 1973 through December 1980. Subsequently, the OHA learned that another applicant has filed a refund application for purchases made by this distributorship after January 1, 1979, and Mr. Parker admitted that he sold the distributorship effective on that date. Consequently, the OHA determined that Mr. Parker was not entitled to a refund.
for purchases made by the distributorship after January 1, 1979 and required him to remit $1,323 to the DOE. Texaco Inc./Oakwood Oil Company, Inc., 2/18/93, RF321-17021

The DOE issued a Decision and Order concerning an Application for Refund filed by Oakwood Oil Co., Inc. (Oakwood) in the Texaco Inc. Subpart V special refund proceeding. This applicant sought a refund equal to its full allocable share based on its purchases of Texaco motor gasoline. In support of its claim of injury above the medium-range presumption level, the firm submitted information showing the status of its cumulative banked gasoline costs at the end of the “banking” regulation period and a competitive disadvantage analysis for its purchases of regular and premium gasoline from Texas. Oakwood did not, however, submit separate purchase volume figures for regular and premium gasoline in its competitive disadvantage analysis. Therefore, in each analysis all gallons of motor gasoline purchased from Texaco were utilized. Since both analyses showed strongly positive results, no attempt at apportioning purchases between the grades was undertaken. The total refund amount granted in this decision was $93,793 ($69,807 principal and $23,986 interest).

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/Astroline Corporation
Atlantic Richfield Company/Franko Oil Company
Atlantic Richfield Company/Grafton ARCO et al
City of Okolona et al
Clark Oil & Refining Corp./Jerome Schram Super 100 et al
Dasarte Unified School District et al
Gulf Corporation/McKenzie Construction Co. et al
Gulf Oil Corporation/State of Louisiana
Gulf Oil Corporation/William L. Brown Ranch et al
Rocky River Gulf Engel Fuel Service, Inc
Rosemount Elementary School District 78 et al
Shell Oil Company/Tigman’s Shell #1 et al
St. Johnsville Central School
Texaco Inc./Better Stop Texaco
Texaco Inc./Bill’s Texaco et al
Texaco Inc./Bob’s Service Station et al
Texaco Inc./Oakwood Oil Company,
Texaco Inc./Shaw & 99 Texaco
Texaco Inc./Tony’s Texaco et al
Transportation Lease Corp.

Dismissals

The following submissions were dismissed:

<table>
<thead>
<tr>
<th>Name</th>
<th>Case No.</th>
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<tbody>
<tr>
<td>Apelhans Oil Co</td>
<td>RF300-15172</td>
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<tr>
<td>Arthur L. Cookes</td>
<td>RD272-26039</td>
</tr>
<tr>
<td>Central Petroleum</td>
<td>RF300-18359</td>
</tr>
<tr>
<td>City of Holly Hill</td>
<td>RF272-88057</td>
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<tr>
<td>City of Marshall</td>
<td>RF272-88044</td>
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<tr>
<td>City of West Richland</td>
<td>RF272-88026</td>
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<tr>
<td>City of Wiggins</td>
<td>RF272-88019</td>
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<tr>
<td>East Tennesse Gulf</td>
<td>RF300-14295</td>
</tr>
<tr>
<td>G.M.C. Delco Remy Division</td>
<td>RD272-24129</td>
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<tr>
<td>Jack Morenci Gulf</td>
<td>RF300-14237</td>
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<tr>
<td>Joe's Service Center</td>
<td>RF272-88033</td>
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<tr>
<td>Lockesburg School District</td>
<td>RF272-88026</td>
</tr>
<tr>
<td>Machine Interstate Trans. Company, Inc.</td>
<td>RF300-14278</td>
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<tr>
<td>Murray's Gulf</td>
<td>RF300-13426</td>
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<tr>
<td>Nixon's Gulf, Inc</td>
<td>RF300-18516</td>
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<tr>
<td>Rachles Gasoline Co</td>
<td>RF300-15166</td>
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<tr>
<td>Salado Texaco Truck Stop</td>
<td>RF321-18347</td>
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<tr>
<td>Shamrock Shell</td>
<td>RF315-7599</td>
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<tr>
<td>Sioux Valley Coop</td>
<td>RF304-13491</td>
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<tr>
<td>South Green &amp; Texco</td>
<td>RF300-16131</td>
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<tr>
<td>Swansea Oil Co, Inc</td>
<td>RF300-15167</td>
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<tr>
<td>Town of Westborough</td>
<td>RF272-88025</td>
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<tr>
<td>Township of Maple Shade</td>
<td>RF272-88046</td>
</tr>
<tr>
<td>Township of Warren</td>
<td>RF272-88032</td>
</tr>
</tbody>
</table>

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 15E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 9 A.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: March 31, 1993.

Richard T. Tedrow,
Acting Director, Office of Hearings and Appeals.

[FR Doc. 93-7960 Filed 4-5-93; 8:45 am] BILLING CODE 6450-01-M

Alabama-Tennessee Natural Gas Co.; Request Under Blanket Authorization

March 30, 1993.

Take notice that on March 26, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama 35631, filed in Docket No. CP93-275-000 a request pursuant to § 157.205 of the Commission’s Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap to Minnesota Mining and Manufacturing Company (3M) under Alabama-Tennessee’s blanket certificate issued in Docket No. CP85-359-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Alabama-Tennessee asserts that 3M is an end user of natural gas presently served indirectly by Alabama-Tennessee through the municipally owned
facilities of the City of Decatur, Alabama.

Alabama-Tennessee states that it proposes to add a sales tap on its system in Morgan County, Alabama in order to provide direct natural gas transportation deliveries to 3M. Alabama-Tennessee further states that it would deliver up to 4,500 dekatherms of natural gas per day to 3M.

Alabama-Tennessee asserts that the proposed service will have no impact on its peak day and annual deliveries. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed thereof, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

[Lois D. Cashell, Secretary.
[FR Doc. 93–7971 Filed 4–5–93; 8:45 am]]
BILLING CODE 6717–01–M

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff
[Docket No. TG93–4–21–000]
March 31, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 29, 1993, tendered for filing the following proposed changes in its FERC Gas Tariff, First Revised Volume No. 1:

April 1, 1993
1st Revised Thirty-fourth Revised Sheet No. 26
1st Revised Twenty-seventh Revised Sheet No. 26A
1st Revised Thirty-second Revised Sheet No. 26
1st Revised Twenty-seventh Revised Sheet No. 26A
1st Revised Twenty-second Revised Sheet No. 26B
1st Revised Sixteenth Revised Sheet No. 26C
1st Revised Twenty-third Revised Sheet No. 26D
1st Revised Thirtieth Revised Sheet No. 163

Columbia states the sales rates set forth on 1st Revised Twenty-seventh Revised Sheet No. 26.1 reflect an increase on 40.36¢ per Dth in the commodity rate when compared with the total CDS rates reflected in its last PCA filing which was filed on February 26, 1993 and became effective on March 1, 1993. In addition, the transportation rates set forth on 1st Revised Sixteenth Revised Sheet No. 26C.1 and 1st Revised Twenty-Third Revised Sheet No. 26D reflect an increase in the Fuel Charge component of 0.97¢ per Dth.

Columbia states that copies of the filing is being mailed to Columbia's jurisdictional customers and affected state regulatory 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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 7, 1993. 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 Columbia's filing are on file with the Commission and are available for public inspection.

[Lois D. Cashell, Secretary.
[FR Doc. 93–7980 Filed 4–5–93; 8:45 am]]
BILLING CODE 6717–01–M

El Paso Natural Gas Co.; Request Under Blanket Authorization
[Docket No. CP93–271–000]
March 31, 1993.

Take notice that on March 25, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP93–271–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act, for authority under its blanket certificate issued in Docket No. CP82–435–000, to operate certain delivery taps originally installed and used for Section 311(a), subpart B transportation, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso indicates that these six delivery taps, i.e., Sedona Meter Station, Yavapai County, Arizona; Chino Valley Meter Station, Yavapai County, Arizona; Loma Linda Tap, Greenlee County, Arizona; H & H Seed Company Tap, Yuma County, Arizona; Golden Shores Meter Station, Mohave County, Arizona; and Foothills Meter Station, Yuma County, Arizona.

were initially installed to provide section 311 transportation service to certain LDCs connected to El Paso's system. El Paso now requests NGA authorization to operate the six delivery taps in order to provide the LDCs and their customers greater flexibility in the selection of transportation services, and the shippers that are ineligible for Subpart B transportation service access to additional delivery points on El Paso's system.

El Paso contends that it has sufficient capacity to meet the existing contractual obligations of its other customers plus the additional volumes which would be requested due to NGA certification of the six delivery taps.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

[Lois D. Cashell, Secretary.
[FR Doc. 93–7973 Filed 4–5–93; 8:45 am]]
BILLING CODE 6717–01–M

Florida Power & Light Co.; Filing
[Docket No. ER93–465–000]
March 31, 1993.

Take notice that on March 29, 1993, Florida Power & Light Company (FPL) tendered for filing the following rate schedules: (i) Transmission Service Tariff Nos. 1, 2 and 3; (ii) amendments to each of FPL's Agreements to Provide Specified Transmission Service; (iii) an amendment to the Agreement to Provide Coordination Transmission Service and Additional Transmission Service Between FPL and the Utility Board of the City of Key West, Florida; (iv) a revised Wholesale Electric Service Tariff
Great Lakes Gas Transmission Limited Partnership; Proposed Changes in FERC Gas Tariff and Withdrawal of Proposed Tariff Sheets

[Docket Nos. RP90-186-055; RP90-20-000]

March 31, 1993

Take notice that Great Lakes Gas Transmission Limited Partnership ("Great Lakes"), on March 25, 1993, tendered to the Federal Energy Regulatory Commission ("Commission") for filing as part of its FERC Gas Tariff, Original Volume Nos. 2 and 3, the following amended tariff sheets, to become effective on April 1, 1993:

Primary Tariff Sheets

Original Volume No. 2:
Substitute Nineteenth Revised Sheet No. 77
Substitute Fifteenth Revised Sheet No. 151

Original Volume No. 3:
Eighth Revised Sheet No. 2
proceedings in Docket No. RS92-63-000.

Great Lakes states that copies of this filing were posted and served on all of its customers, upon the Public Service Commissions of the States of Minnesota, Michigan, and Wisconsin, and upon all parties listed on the service list maintained by the Commission’s 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 April 7, 1993. 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. 93–7979 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP93–277–000]
K N Energy, Inc.; Request Under Blanket Authorization
March 31, 1993.

Take notice that on March 29, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP93–277–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate six sales taps for the delivery of natural gas for end users, under the blanket certificate issued in Docket No. CP83–140–000, as amended, pursuant to section 7(c) 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.

K N states that by order issued November 23, 1992, in Docket No. CP93–149–002, the Commission amended K N’s blanket certificate issued pursuant to subpart F of part 157 of the Commission’s Regulations to allow K N to use the prior notice procedure in connection with requests to construct and operate on-system sales taps for new or existing direct retail customers to the extent allowed under K N’s tariff provisions concerning limitations on deliveries and thereby waived § 157.211(b)(2) of the regulations as to such requests. In this request, K N proposes to construct and operate sales taps to various end users located along its jurisdictional pipelines. Details of each retail sale is shown on the attached appendix.

K N states that the natural gas delivered through these taps would ultimately be consumed by end users served directly from K N’s general system supply. It is indicated that the proposed sales taps are not prohibited by any of K N’s existing tariffs, and the additions of the new sales taps would have no significant impact on K N’s peak day and annual deliveries. It is also indicated that the gas would be priced in accordance with the currently filed rate schedules authorized by the applicable state and local regulatory bodies having jurisdiction over the sales. K N also states that each customer would reimburse K N for a portion of the facility costs through imposition of a connection charge of $400.

Any person or the Commission’s staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission’s Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.
[FR Doc. 93–7977 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–08–000]
Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff
March 31, 1993.

Take notice that Northern Natural Gas Company (Northern), on March 29, 1993, tendered for filing to become part of Northern’s FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, proposed to be effective April 1, 1993:
Second Revised Sheet No. 244

The above sheet reflects a proposed change in Northern’s Receipt Point Scheduling Penalty parameters that include under normal conditions the penalty would be determined at a contract level rather than at each point of receipt.

Northern states that copies of the filing have been mailed to all of Northern’s customers and interested state commissions.

Any person desiring to hear or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. In accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211 and 385.214), all such motions or protests should be filed on or before April 7, 1993. 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. 93–7977 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–4–004]
Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff
March 31, 1993.

Take notice that on March 29, 1993, Mississippi River Transmission Corporation ("MRT"), 9900 Clayton Road, St. Louis, MO 63124 moved into effect certain rates and revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 1–A of its FERC Gas Tariff.

MRT states that the tariff sheets reflected on Appendix A to the filing are to become effective April 1, 1993, pursuant to the Commission’s October 30, 1992 and January 21, 1993 orders in the above-referenced docket. MRT states that a copy of its motion and the accompanying tariff sheets has been served on all jurisdictional customers and interested state commissions and all persons on the Commission’s official service list in Docket No. RP93–4–000.

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 Sections 385.211 and 385.214 of the Commission’s Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1993. 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. 93–7977 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M
protests must be filed on or before April 7, 1993. 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 petition to intervene. Copies of this filing are available for public inspection.

Lois D. Cashall, Secretary.

[FR Doc. 93–7978 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. TA93–1–59–001] Northern Natural Gas Co.; Filing

March 31, 1993.


Northern further states that copies of the filing have been mailed to each of its 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 April 7, 1993. 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. Cashall, Secretary.

[FR Doc. 93–7978 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M


March 31, 1993.

Take notice that on March 26, 1993, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77251–1478 filed in Docket No. CP93–274–000 a request pursuant to § 385.205 of the Commission’s Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap for the delivery of natural gas to Entex, Inc. (Entex) in Pike County, Mississippi, under United’s blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to construct and operate the tap for service to Entex, a jurisdictional sales customer, for resale to one agricultural customer, under United’s Rate Schedule DC. It is stated that United will use the tap for the delivery of volumes up to 2,353 MMBtu equivalent of natural gas per day. It is asserted that these deliveries would be within Entex’s currently authorized entitlement from United. It is estimated that the cost of installing the tap is $1,500. It is explained that United has sufficient capacity to render the proposed deliveries without detriment or disadvantage to its other existing customers. It is asserted that United’s tariff does not prohibit the addition of a sales tap.

Any person or the Commission’s staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission’s Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashall, Secretary.

[FR Doc. 93–7972 Filed 4–5–93; 8:45 am]
BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $32,500, plus accrued interest, in refined petroleum product violation amounts obtained by the DOE pursuant to a Remedial Order issued to Starks Shell Service, Case No. LFR–0034. The OHA has determined that the funds obtained from Starks, plus accrued interest, will be distributed to those injured as a result of Starks’ violation of Federal petroleum price regulations.

DATE AND ADDRESS: Applications for Refund must be filed in duplicate, addressed to “Starks Special Refund Proceeding,” and sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20545.

Applications should display a prominent reference to case number “LFR–0034” and be postmarked by September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20545, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute to eligible claimants $32,500, plus accrued interest, remitted to the DOE pursuant to an August 22, 1984 Remedial Order issued to Starks Shell Service. The Remedial Order found that, during the period April 1, 1980 through January 28, 1981, Starks sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has determined to distribute these funds in two stages. In the first stage, we will accept claims from those injured as a result of Starks’ overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in Section III of the Decision. A claimant who meets these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from Starks during the period April 1, 1980 through January 28, 1981, and the degree to which they can demonstrate injury.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Rerstitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund must be postmarked by September 30, 1993. Instructions for the completion of refund applications are set forth in the Decision that immediately follows this.
Federal Register / Vol. 58, No. 64 / Tuesday, April 6, 1993 / Notices

notice. Applications should be sent to the address listed at the beginning of this notice.

Unless labelled as "confidential," all submissions must be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-214, 1000 Independence Avenue SW., Washington, DC 20585.


George B. Brennay,
Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: Starks Shell Service
Date of Filing: June 7, 1991
Case Number: LEF-0034

On June 7, 1991, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA), to distribute the funds which Starks Shell Service (Starks) remitted to the DOE pursuant to an August 22, 1984 Remedial Order. Starks has remitted $32,500 pursuant to the order, to which $2,060 in interest has accrued as of December 31, 1992. In accordance with the provisions of the procedural regulations of 10 CFR part 205, subpart V (Subpart V), the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of regulatory violations set forth in the Remedial Order. This Decision and Order establishes the procedures which OHA will employ to distribute these funds.

I. Background

During the period relevant to this proceeding, Starks operated two Shell-branded retail service stations located in Seaside, California. The ERA issued two Proposed Remedial Orders (PROs) to Starks on May 29, 1981. The PROs alleged that, during the period April 1, 1980 through January 28, 1981, Starks sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations. After considering the firm's objections to the PROs, the DOE amended the PROs and issued a final Remedial Order on August 22, 1984. Starks Shell Service, 12 DOE ¶ 83,015 (1984). On September 24, 1984, Starks notified the DOE that it intended to appeal the Remedial Order to the Federal Energy Regulatory Commission (FERC). On May 6, 1985, after Starks failed to go forward on appeal, Starks' notice of intent to appeal was dismissed by the FERC. Starks Shell Service, No. RO85-1-000 (May 6, 1985) (order terminating proceeding for lack of prosecution). Starks has since remitted $32,500 to the DOE, in compliance with the Remedial Order, to which $2,060 in interest has since accrued as of December 31, 1992, making available a total of $34,560 (the Starks Remedial Order fund) for distribution through subpart V.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1988, 15 U.S.C. 4501 et seq., Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement a subpart V proceeding with respect to the Starks Remedial Order fund and have determined that such a proceeding is appropriate. This Decision and Order sets forth the OHA's plan to distribute this fund.

III. Refund Procedures

On November 30, 1992, OHA issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the Starks Remedial Order fund. That PDO was published in the Federal Register, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. See 57 FR 57448 (December 4, 1992). More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Starks Remedial Order fund.

Consequently, the procedures will be adopted as proposed, with the exception of certain injury presumptions originally proposed that we have determined will not be required in this proceeding. In particular, because Starks is a retailer of motor gasoline, we expect that the group of potential applicants will be limited to: (I) Ultimate consumers ("end-users") of gasoline sold by Starks or (ii) regulated entities, such as public utilities, and cooperatives. Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers. However, if a refiner, reseller, or retailer should file an application in the Starks refund proceeding, we may utilize the appropriate presumptions, which are set forth in detail in the Proposed Decision and Order.

A. First Stage Refund Procedures

We will implement a two-stage refund procedure for distribution of the Starks Remedial Order fund by which purchasers of gasoline from Starks during the period covered by the Remedial Order may submit Applications for Refund in the initial stage. In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from Starks during the period covered by the Remedial Order.

Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, e.g., Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the allocable subpart V regulations at 10 CFR 205.282(e). Accordingly, we will adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that the overcharges were dispersed equally in all of Starks' sales of gasoline during the period covered by the Remedial Order. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of the
Remedial Order fund is equal to the number of gallons purchased from Starks during the period covered by the Remedial Order times the per gallon refund amount. In the present case, the per gallon refund amount is $0.0581. We derived this figure by dividing the amount of the Remedial Order fund, $32,500, by 559,231 gallons, the volume of gasoline which Starks sold from April 1, 1980 through January 28, 1981. A firm that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.2

In addition to the volumetric presumption, we will also adopt the following presumptions regarding injury for end-users, regulated firms, and cooperatives.

2. End-Users

In accordance with prior subpart V proceedings, we will adopt the presumption that an end-user or ultimate consumer of gasoline purchased from Starks whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the Remedial Order. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (TOGCO). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the period covered by the Remedial Order, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. Id. Accordingly, end-users of gasoline purchased from Starks need only document their purchase volumes from Starks during the period covered by the Remedial Order to make a sufficient showing that they were injured by the overcharges.

3. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its members, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers. See Exxon Corp., 17 DOE 185,590, at 89,150 (1989) (Exxon).

In addition to the volumetric presumption, we will also adopt the following presumptions regarding injury for regulated firms and cooperatives:

- (1) Identifying information including the claimant’s name, current business address, business address during the refund period, taxpayer identification number, and the name and address of the person who should receive any refund check.4 If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;
- (2) The applicant’s use of gasoline purchased from Starks: e.g., consumer (and-used) cooperative, or public utility;
- (3) A monthly purchase schedule for gasoline covering the period April 1, 1980 through January 28, 1981. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the refund period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained in detail;
- (4) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, and membership group of the receipt of any refund, and return the refund period, and was not available. This information will be used in processing refund applications, and is requested pursuant to regulations codified at 10 CFR part 205, subpart V. If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;
- (5) If the applicant is or was in any way affiliated with Starks, and the ownership of the applicant’s firm has changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the time period in which it was affiliated; and
- (7) A statement as to whether the ownership of the applicant’s firm has changed during or since the refund period. If an ownership change occurred, the applicant should list the names, addresses, and telephone numbers of any prior or subsequent owners. The applicant should also provide copies of any relevant Purchase and Sale Agreements, if available. If such written documents are not available, the applicant should submit a description of the ownership change, including the year of the sale and the ownership change.
type of sale (e.g., sale of corporate stock, sale of company assets); (8) A statement as to whether the applicant has ever been a party in a DOE enforcement action or a private section 210 action. If so, an explanation of the case and copies of relevant documents should also be provided; (9) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application, which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and clearly labeled “Starks Special Refund Proceeding, Case No. LEF-0034.” Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated “confidential,” containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than September 30, 1993, and sent to: Starks Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

In addition, we will adopt the following procedures relating to refund applications filed on behalf of applicants by “representatives,” including refund filing services, consulting firms, accountants, and attorneys. See Texaco Inc., 20 DOE F 85,147 (1990). Each such filing service file, contemporaneously with its first filing in the Starks proceeding, submit a statement indicating its qualifications for representing refund applicants and containing a detailed description of the solicitation practices and application procedures that it has used and plans to use. This statement should contain the following information:

A description of the procedures used to solicit refund applications in the Starks proceeding and copies of any solicitation materials mailed to prospective Starks applicants;

2. A description of how the filing service obtains authorization from its clients to act as their representative, including copies of any type of authorization form signed by refund applicants;

3. A description of how the filing service obtains and verifies the information contained in refund applications;

4. A description of the procedures used to forward refunds to its clients;

5. A description of the procedures used to prevent and check for duplicate filings.

Upon receipt of this information, we may suggest alteration of a filing service’s procedures if they do not conform to the procedural requirements of 10 CFR part 205 and this proceeding.

Secondly, we will require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

Thirdly, in any case where an application has been signed and dated before the issuance of this Decision and Order in this proceeding, we will require a certification statement, signed and dated by the applicant after the date of the issuance of this Decision and Order. This certification should state that the applicant has not filed and will not file any other Application for Refund in the Starks proceeding and that, after having been provided a copy of this Decision and Order, it still authorizes that filing service to represent it.

Fourthly, we will require from each representative a statement certifying that it maintains a separate escrow account at a bank or other financial institution for the deposit of all refunds received on behalf of applicants, and that its normal business practice is to deposit all subpart V refund checks in that account within two business days of receipt and to disburse refunds to applicants within 30 calendar days thereafter. Unless such certification is received by the OHA, all refund checks approved will be made payable solely to the applicant. Representatives who have not previously submitted an escrow certification form to the OHA may obtain a copy of the appropriate form by contacting: Marcia B. Carlson, HC-13, Chief, Docket & Publications Division, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Finally, the OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in this proceeding.

C. Distribution of Funds Remaining After First Stage

Any funds that remain after all first stage claims have been decided shall be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Starks Remedial order fund that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted by Starks Shell Service pursuant to the Remedial Order dated August 24, 1984 may now be filed.

(2) Applications for Refund must be postmarked no later than September 30, 1993.


George B. Brennan
Director, Office of Hearings and Appeals
AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air Radiation
Title: Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (EPA ICR No. 116.04; OMB No. 2060-0060). This ICR requests renewal of the existing clearance.

Abstract: Automotive aftermarket part manufacturers must submit an application for certification that includes testing, reporting, and keeping records of their parts’ emission performance and durability. The manufacturers must demonstrate to EPA which parts are certified and for which vehicle they are certified. The Agency needs the information to verify compliance with Federal emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 381 hours per response, including time for reviewing instructions, searching existing data sources, testing, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle, aftermarket part manufacturers.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden on Respondents: 3,048.

Frequency of Collection: As part is certified.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, (P/O-223Y), 401 M Street, SW., Washington, DC 20460. and Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20530.

Dated: March 26, 1993.

Paul Lapsley, Director, Regulatory Management Division.

[VFR Doc. 93-7985 Filed 4-5-93; 8:45 am]

BILLING CODE 6560-00-F

[FR-4610-4]

Public Water System Supervision Program Revision for the State of North Dakota
AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given, in accordance with the provisions of section 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of North Dakota has revised its Public Water System Supervision (PWSS) Program. North Dakota’s PWSS program, administered by the North Dakota Division of Municipal Facilities, has adopted regulations for filtration, disinfection, turbidity, Giardia Lamblia, viruses, Legionella, heterotrophic bacteria and public notice that corresponds to the NPDWR for filtration, disinfection, turbidity, Giardia Lamblia, viruses, Legionella, heterotrophic bacteria and public notice promulgated by EPA on June 29, 1989 (54 FR 27486-27541) and October 28, 1987 (52 FR 41534-41550). The Environmental Protection Agency (EPA) has completed its review of North Dakota’s primary revisions and has determined that they are no less stringent. EPA therefore approves North Dakota’s primary revisions. This determination shall become effective May 6, 1993. Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before May 6, 1993. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: Jack W. McGraw, Acting Regional Administrator, c/o Bob Clement (8WM-DW), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202-2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held. Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person’s interest in the Regional Administrator’s determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the Federal Register and in newspapers of general circulation in the State of North Dakota. A notice will also be sent to the person(s) requesting the hearing as well as to the State of North Dakota. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on May 6, 1993. Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII, Drinking Water Branch, 999 18th Street (4th floor), Denver, Colorado; (2) North Dakota State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, North Dakota 58502-5520.

FOR FURTHER INFORMATION CONTACT: Bob Clement, Drinking Water Branch, EPA...
ACTION: Agency (EPA).

SUMMARY: The Environmental Protection Agency on July 8, 1987 (52 FR 25690) and corrected on July 1, 1988 (53 FR 25108); (2) public notice regulations that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals that the State of Hawaii is revising its State Public Water System Supervision Program. This rule is currently under development and has not yet been proposed. The following is a list of some of the topics for discussion at the meeting:

- Case-by-case by Maximum Achievable Control Technology (MACT)
- Definition of modification:
- Exclusions for emissions up to permitted levels
- Exclusions for alternative operating scenarios detailed in the operating permit
- Definition of source
- De minimis levels and hazard ranking approach, including definitions, bioaccumulation and the use of modeling
- Flexible delagation of the Section 112(g) program to state and local agencies
- Approvability of a state or local top-down control approach as "equivalent"
- Approvability of a state or local program without offsets
- Administrative process for MACT and offset determinations
- 112(d) compliance extensions for facilities that have implemented case-by-case determinations under 112(g)
- Procedures for satisfying record keeping requirements of 112(g)

The public will have opportunity to comment on the issues discussed by the subcommittee. The recommendations of the CAAAC (subcommittee) and the public will assist in the continued development of the 112(g) rule.

INSPECTION OF THE COMMITTEE

DOCUMENTS: The documents being discussed by the subcommittee members are available to the public.

For more information, contact Jane Caldwell-Kenkel. For further information concerning this special meeting of the CAAAC, please contact Dr. Jane Caldwell-Kenkel, Office of Air Quality Planning and Standards, US EPA (919) 541-0328, FAX (919) 541-4028, or by mail at US EPA, Office of Air Quality Planning and Standards, MD-13, Research Triangle Park, North Carolina 27711.


Michael H. Shapiro,
Acting Assistant Administrator, Office of Air and Radiation.

[CFR Doc. 93-7833 Filed 4-5-93; 8:45 am]
BILLING CODE 6560-50-W

[FR—4610—5]

Clean Air Act Advisory Committee: Special Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR. No. 217, 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATE: Notice is hereby given that a subcommittee of the Clean Air Act Advisory Committee (the Subcommittee on Early Reductions and Pollution Prevention) will hold a special open meeting on April 22 and 23, 1993 from 9 a.m. to 4 p.m., at the Carolina Inn, 211 Pittsboro Avenue, Chapel Hill, North Carolina 27514. Seating will be available on a first come, first served basis.

Any request for a public hearing must be submitted by May 6, 1993 to the Regional Administrator at the address shown below. Insufficient requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective May 6, 1993.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: March 26, 1993.

Nora L. McGee,
Acting Regional Administrator.

[FR Doc. 93-7913 Filed 4-5-93; 8:45 am]
BILLING CODE 6560-50-P

[4610—6]

CWA Section 303(d) Lists for Arkansas, Louisiana and Texas

AGENCY: U.S. Environmental Protection Agency, Region 6.

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency, Region 6, is announcing the...
availability of, and soliciting public comment on, lists of waters identified by the States of Arkansas, Louisiana, and Texas as requiring the development of Total Maximum Daily Loads (TMDLs) under section 303(d) of the Clean Water Act. The comments will inform EPA's decision to either approve or disapprove the State lists.

FOR FURTHER INFORMATION CONTACT:
Mimi Dannel, U.S. EPA Region 8 (SW-OT), 1445 Ross Avenue, Dallas, Texas 75202-2733, 214-655-0642.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act requires States to identify waters that do not or are not expected to meet applicable water quality standards through implementation of existing required controls. States must establish a priority ranking for these waters, taking into account the pollution severity and designated uses of the waters. For listed waters, States are to develop, in accordance with their priority ranking, water quality protection plans termed Total Maximum Daily Loads (TMDLs). TMDLs include a determination of pollutant loadings compatible with achievement of applicable State water quality standards. State section 303(d) lists and TMDLs are submitted to EPA for approval or disapproval.

Early EPA guidance to the States regarding the public participation required for the development of section 303(d) lists was not clear. As a result, EPA is soliciting comments on the Arkansas, Louisiana, and Texas 1992 section 303(d) lists. All future biennial submissions of section 303(d) lists will provide for public comment at the State level.

The lists are available by mail or for public inspection at the EPA Region 8 office between the hours of 8 a.m. and 4:30 p.m. Monday through Friday except holidays. To request a copy of a list, to make arrangements to examine the lists, or to submit comments, contact the Agency representative identified above. Comments must be submitted within thirty days of the publication of this notice.

Following the close of the comment period, EPA will approve or disapprove the State lists and will issue a response to comments received. A copy of EPA's decision and response to comments document will be sent to all parties submitting comments in response to this notice.

Mimi Dannel, TMDL Coordinator.

FEDERAL COMMUNICATIONS COMMISSION
Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 31, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 657-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Joni Neilhardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None
Title: Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.3 GHz Bands (Report and Order, PR Docket No. 92-60)
Action: New collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting and other: 47 CFR 21.915 and 21.33(b) amendments are one-time submissions
Estimated Annual Burden: 2,040 responses; .33 hours average burden per response; 673 hours total annual burden

Needs and Uses: Report and Order (R&O), PR Docket No. 92-60 the Commission amends several rules and requirements proposed in the Notice of Proposed Rulemaking (NPRM), adopted 4/9/92, aimed at reducing the delays associated with processing applications for stations in the Multipoint Distribution Service (MDS) and curtailing the filing of speculative MDS applications. We believe that the rule change adopted in the attached R&O will serve the public interest by improving the conditions for competition in the multichannel video distribution marketplace in accordance with our goals and the Congressional directives recently set forth in the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102-385, 106 Stat. 1460 (1992). Discussion of some of the rules and requirements modified by the Commission actions in the R&O follows: Modification of 47 CFR 21.13(a), 21.33(b), 21.901(d)(1), 21.29 and 21.39, 21.913(g) and 74.665(g), and 21.902. Section 21.901(d)(2) is also amended and recodified as § 21.915. The information collected pursuant to the attached R&O and current part 21 requirements will be used by the Commission to determine whether the applicant is qualified legally, technically and financially to be licensed to use microwave radio frequencies. Without such information the Commission could not determine whether to issue construction authorizations and licenses to the applicants that provide telecommunications services to the public and therefore, fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.
Donna R. Searcy, Secretary.
[FR Doc. 93-7986 Filed 4-5-93; 8:45 am]
BILLING CODE 0712-01-M

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 832-6934.

OMB Control No.: 3060-0105.
Title: Licensee Qualification Report, FCC Form 430.
Expiration Date: 02/28/98.
Description: The Licensee Qualification Report is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. Part 22 applicants are required to file FCC Form 430 when soliciting authority for assignment or transfer of control if a current one is not on file as required by item 18 on FCC Form 499. FCC Form 430 is used by the Commission personnel to determine whether applicants are legally qualified to become or to remain common carrier telecommunications licensees, as required by the Communications Act. FCC Form 430 will be updated to
display the 02/28/96 expiration date. A Public Notice will be issued to announce the availability of the updated edition of the FCC Form 430 and the deadline for filing the current 1990 edition of the form.

Federal Communications Commission.

Donna R. Searcy, Secretary.

[FR Doc. 93-7989 Filed 4-5-93; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1934]

Petitions For Reconsideration of Actions In Rule Making Proceedings

March 26, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857-3800. Opposition to these petitions must be filed on or before April 21, 1993. See § 1.4(b)(1) of the Commission’s rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Provision of Access for 800 Service. (CC Docket No. 92-60)
Number of Petitions Filed: 6
Subject: Amendment of § 21.902 of the Commission’s Rules Governing use of Frequencies in the 2.1 and 2.5 GHz Bands. (PR Docket No. 92-60)
Number of Petitions Filed: 1

Indecent Programming and other types of Materials on Cable Access Channels. (MM Docket No. 92-258)
Number of Petitions Filed: 1

Federal Communications Commission.

Donna R. Searcy, Secretary.

[FR Doc. 93-7929 Filed 4-5-93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting on Epidemiology Study of Childhood Leukemia and Paternal Exposure to Ionizing Radiation

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Epidemiology Study of Childhood Leukemia and Paternal Exposure to Ionizing Radiation.

Time and Date: 9 a.m.—4:30 p.m., April 21, 1993.

Place: Alice Hamilton Laboratory, Conference Room A, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to obtain individual advice and guidance regarding the technical and scientific merits of the proposed Epidemiologic Study of Childhood Leukemia and Paternal Exposure to Ionizing Radiation being conducted as a cooperative agreement between Battelle Pacific Northwest Laboratories and NIOSH. The individual participants will review the proposed study protocol, recommend changes of scientific merit, and advise on the conduct of the study. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Anne T. Fidler, Sc.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R44, Cincinnati, Ohio 45226, telephone 513/841-4400.

Dated: March 31, 1993.

Elvin Hilyer, Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-7929 Filed 4-5-93; 8:45 am]
BILLING CODE 4160-16-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics; Meeting

Pursuant to Public Law 92—463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting (working session).

Name: NCVHS Subcommittee on State and Community Health Statistics.
Time and Date: 9 a.m. — 5 p.m., April 21, 1993.
Status: Open.
Purpose: The subcommittee’s report on State and Community Health Status will be reviewed for further consideration before submission to the full committee.

Contact Person For More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Dated: March 31, 1993.

Elvin Hilyer, Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-7930 Filed 4-5-93; 8:45 am]
BILLING CODE 4160-18-M

Centers of Disease Control and Prevention

Proposed Environmental Protocol for the Determination of Methods for Obtaining Respiratory Wood Dust Exposure Levels by Task in the Construction Industry; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Proposed Environmental Protocol for the Determination of Methods for Obtaining Respiratory Wood Dust Exposure Levels by Task in the Construction Industry.

[FR Doc. 93-7930 Filed 4-5-93; 8:45 am]
BILLING CODE 4160-18-M
Food and Drug Administration

[Docket No. 93N-0082]

Animal Drug Export; Bacitracin Zinc Type A Article

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Archer Daniels Midland Co. has filed an application requesting approval for export to 21 countries of bacitracin zinc Type A medicated article. The drug is used for increased rate of weight gain and improved feed efficiency in growing chickens and turkeys, and growing/finishing swine, and for increase in egg production and improved feed efficiency in laying chickens.

The application was received and filed in the Center for Veterinary Medicine on November 10, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 16, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the provisions of section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) and under the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Archer Daniels Midland Co., P.O. Box 1470, Decatur, IL 62525, has filed an application requesting approval for export to Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Iceland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom of the animal drug bacitracin zinc Type A medicated article. The drug is used for increased rate of weight gain and improved feed efficiency in growing chickens and turkeys, and growing/finishing swine, and for increase in egg production and improved feed efficiency in laying chickens.

The application was received and filed in the Center for Veterinary Medicine on November 10, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 16, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the provisions of section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) and under the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency...
publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ortho Diagnostic Systems, Inc., Route 202, Raritan, NJ 08869, has filed an application requesting approval for the export of the biological product Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K: (Monoclonal); Control, Ortho BioVue™ System to Australia, Austria, Belgium, Canada, Denmark, Federal Republic of Germany, Finland, France, Iceland, Ireland, Italy, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Ortho Blood Grouping Reagents Anti-C, Anti-E, Anti-c, Anti-e, Anti-K: (Monoclonal); Control, Ortho BioVue™ System is a glass bead column agglutination in vitro diagnostic test for recognition of the C, c, e and K antigens on human red blood cells. The application was received and filed in the Center for Biologics Evaluation and Research on February 12, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 16, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).


Thomas S. Bozzo,
Director, Office of Compliance, Center for Biologics Evaluation and Research.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-238-8041.

SUPPLEMENTARY INFORMATION:

I. Background


As a result of these convictions, FDA served Mr. Mannan by certified mail on January 13, 1993, a notice proposing to permanently debar him from providing services in any capacity to a person that had an approved or pending drug product application and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Mr. Mannan did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Muhammad Z. Mannan has been convicted of felonies under Federal law for conduct (1) relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335(a)(2)); and (2) relating to the regulation of a drug product (21 U.S.C. 335(a)(2)).

As a result of the foregoing findings, Mr. Muhammad Z. Mannan is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective on April 6, 1993 (21 U.S.C. 335(a)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(e)). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Mannan in any capacity, during his period of debarment, will be subject to civil money penalties. If Mr. Mannan, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties.

In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibacterial drug application from Mr. Mannan during his period of debarment.

Any application by Mr. Mannan for termination of debarment under section 306(d)(4) of the act (21 U.S.C. 335(a)(4)) should be identified with Docket No. 92N-0466 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.
Committee to Revise the Public Health Service 398 Research Grant Application

AGENCY: National Institutes of Health, HHS.

ACTION: Notice of committee to revise the PHS 398 Research Grant Application.

SUMMARY: A committee of the National Institutes of Health (NIH), with representatives from within the Public Health Service (PHS), has begun work on revising the PHS 398 Research Grant Application (which includes the Institutional National Research Service Award), the PHS 2590 Noncompeting Continuation Research Grant Application, the PHS 416-1 Individual National Research Service Award, and the PHS 416-9 Noncompeting Continuation Individual National Research Service Award. The committee welcomes any suggestions or comments from the scientific community or from other interested persons regarding ways to improve the application kits. Suggestions could concern items such as clarity of instructions, other support, structure of the scientific proposal, biographical sketch, and personnel information.

ADDRESSES: Please send suggestions or comments on or before April 19, 1993; to: Ms. Barbara Wassell, Project Clearance Liaison, Division of Research Grants, National Institutes of Health, Westwood Building, room 5, Bethesda, MD 20892.

Bernardine Haaly,
Director, NIH.

FOR FURTHER INFORMATION CONTACT: Denise L. Gose, Program Assistant, Division of Workplace Programs, Room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Altaiia, AL 35954-0770, 205-538-0012/800-247-3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615-531-5300

Alabama Reference Laboratories, Inc., 543 South Hall Street, Montgomery, AL 36103, 800-541-4931/205-283-5745

Jane E. Henney,
Deputy Commissioner for Operations.

[FR Doc. 93-7243 Filed 4-5-93; 8:45 am]
BILLING CODE 4180-01-F

National Institute of Mental Health; Meeting

The Division of Extramural Activities of the National Institute of Mental Health announces an ad hoc concept review. This committee will be performing a review of a Request for Applications entitled "Psychoanalytic Performance of a Review of a Request for Application". This committee will be performing a review of a Request for Application entitled "Psychoanalytic Performance of a Review of a Request for Application."

This meeting will be held April 14, 1993, from 9 a.m. to adjournment, in room 15-99, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; and will be open to the public. Attendance by the public will be limited to space available. Any person wishing to attend should notify the contact person by April 12, 1993.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Ad Hoc Concept Review Committee.

Contact: Jean G. Noronha, Ph.D., Room 9C-15, Parklawn Building, Telephone: (301) 496-6470

Meeting Date: April 14, 1993.

Place: Room 15-99, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857

Open: April 14, 9 a.m. to adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

[Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.261, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.262, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award]

Dated: April 1, 1993.

Susan K. Feldman,
Committee Management Officer, NIH.

[FR Doc. 93-8051 Filed 4-5-93; 8:45 am]
BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage In Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11079, 11966). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Gose, Program Assistant, Division of Workplace Programs, Room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

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In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Altaiia, AL 35954-0770, 205-538-0012/800-247-3893

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, suite 21, Nashville, TN 37211, 615-531-5300

Alabama Reference Laboratories, Inc., 543 South Hall Street, Montgomery, AL 36103, 800-541-4931/205-283-5745
Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257
American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 20121, 703-925-2900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119-5412, 702-733-7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2767
Baptist Medical Center—Toxicology Laboratory, 6601 E. 63rd, Exit 7, Little Rock, AR 72205-7299, 501-227-2783
(formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Bayshore Clinical Laboratory, 4555 W. Boulevard, Hurst, TX 76053, 817—282-2257
Bioan Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900
California Toxicology Services, 1923 East Dakota Avenue, suite 206, Fresno, CA 93726, 209—221—5955/ 800—488—7600
CEDA Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305—325—5310
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310—215—6020
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 800—638—1100 (name changed: formerly LabCorp)
Clinical Reference Laboratory, Inc., 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919—549—8263/800—833—3984
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919—549—8263
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800—876—3652/417—836—3093
CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137—3054, 800—336—0196
(outside OH)/800—362—8913 (inside OH) (name changed: formerly CPF Medical Laboratories; Southgate Medical Services, Inc.)
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800—638—1100 (name changed: formerly Chem-Bio Corporation; CBC ClinicLab)
Damon Clinical Laboratories, 8300 Estes Blvd., suite 900, Irving, TX 75063, 214—828—3035
Dept. oj Forensic, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511—2557, 804—448—8069 ext. 317
Doctors & Physicians Laboratory, 801 East Dixie Avenue, L��ington, FL 32748, 904—787—9006
Drug Labs of Texas, 15201 I-10 East, suite 125, Channelview, TX 77530, 713—457—3784
DrugScan, Inc., P.O. Box 2969, 1119 Mears Road, Warrington, PA 18974, 215—674—9310
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompomr Beach, FL 33063, 506—946—4324
ElSothi Laboratories, Inc., 1215½ Jackson Ave., Oxford, MS 38655, 601—236—2609
Employee Health Assurance Group, 405 Alderson Street, Schenectady, NY 12308, 508—665—5800 (name change: formerly Alpha Medical Laboratory, Inc.)
General Medical Laboratories, 188 South Brooks Street, Madison, WI 53715, 608—267—6267
Harrison & Associates Forensic Laboratories, 806 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 806—725—3784/915—587—6877
Healthcare Near West Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800—328—4142 (inside MI)/ 800—225—9414 (outside MI)
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, suite 354, Houston, TX 77030, 713—793—6080
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, suite E, Provo, UT 84604, 800—987—8766
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45223, 513—589—2051
Laboratory of Pathology of Seattle, Inc., 1220 Madison St., suite 500, Nordstrom Medical Tower, Seattle, WA 98101, 206—386—2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504—392—7961
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715—390—3734/800—222—5835
Mayo Medical Laboratories, 200 SW First Street, Rochester, MN 55905, 507—284—3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412—931—7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901—795—1515
Medical Science Laboratories, 11020 W. Plank Court, Waukesha, WI 53186, 414—476—3400
MetDx Bio-Analytical, a Division of MetDx Laboratories, Inc., 6160 Varial Avenue, Woodland Hills, CA 91367, 818—226—4373 (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/23/92)
MetDx Bio-Analytical, a Division of MetDx Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312—880—8900 (name changed: formerly Bio-Analytical Technologies)
MetDx Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800—334—3244/612—336—7868
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317—829—3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800—752—1835/309—671—5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708—595—3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07602, 201—393—5000
MetWest-BFL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800—492—0800/818—343—8191
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore MD 21227, 410—536—1485 (name changed: formerly Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73106, 800—749—3784 (name changed: formerly Med Arts Lab)
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103—6710, 919—760—4620/800—334—4627 (outside NC)/800—642—0894 (inside NC)
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016—2843, 908—272—2511
National Health Laboratories Incorporated d.b.a. National Reference Laboratory Substance Abuse Division, 1400 Donelson Pike, suite A—15, Nashville, TN 37217, 615—360—3992/ 800—600—4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703—742—3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800—251—9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805—322—4250

Cooperative Agreements for Demonstration Projects on Access to Community Care and Effective Services and Supports (ACCESS) for Homeless Persons With Severe Mental Illness

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Request for application.

**Introduction**

The Center for Mental Health Services (CMHS) announces the availability of support for projects that will demonstrate and evaluate services integration approaches for homeless persons with severe mental illnesses, particularly those with co-occurring alcohol and/or other substance use disorders. This Request for Applications (RFA) addresses one of the major action steps set forth in Outcasts on Main Street: Report of the Federal Task Force on Homelessness and Severe Mental Illness. Potential applicants may obtain a copy of this report through Policy Research Associates, 262 Delaware Avenue, Delmar, New York 12054 (telephone: 1-800-444-7415).

Funds will be awarded through a cooperative agreement mechanism that will authorize the Federal government to be an active participant in this program and to obtain specific evaluation data across project sites, advise program and integration activities based on evaluation findings, coordinate the collection, compilation, aggregation and analysis of a core data set, and convene meetings of a coordinating group comprised of key project staff and Federal staff for the purpose of facilitating evaluation activities and discussing programmatic issues.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This RFA, Access to Community Care and Effective Services and Supports (ACCESS), is related to the objectives set forth in Chapter 6, Mental Health and Mental Disorders, in Healthy People 2000: National Health Promotion and Disease Prevention Objectives. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0; or Summary Report: Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone: 202-783-3238).
Program Description

History

The Federal Task Force on Homelessness and Severe Mental Illness was convened in May, 1990 by the Federal Intergency Council on the Homeless to develop a plan of action to end homelessness among people who are severely mentally ill. Consisting of representatives from all major Federal departments whose policies and programs directly affect the homeless severely mentally ill population, the Task Force also sought advice from experts in mental health research and housing administration, citizen advocates, mental health consumers, and State and local officials. Outcasts on Main Street: Report of the Federal Task Force on Homelessness and Severe Mental Illness describes their recommendations and over 50 action steps to be undertaken by the departments and agencies represented on the Task Force to improve access and remove impediments to housing, treatment, and supports, and to promote services integration.

The Task Force reached broad consensus that ending homelessness among people with severe mental illness requires an integrated system of care that offers access to essential services and to affordable and safe housing. To encourage the development of such systems in communities across the Nation, the Department of Health and Human Services (HHS), in collaboration with the Departments of Housing and Urban Development (HUD), Labor (DOL), Education (DOEd), Veterans Affairs (VA), and Agriculture (USDA), is initiating this ACCESS program.

Target Population

The target population includes all persons, 18 years of age and over, who are homeless and have a severe mental illness, with special emphasis on those individuals who have co-occurring mental illnesses and alcohol and/or drug use disorders.

The term "homeless" or "homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals not intended to be institutionalized; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Severe mental illness refers to persistent mental or emotional disorders (including, but not limited to, schizophrenia, schizoaffective disorders, mood disorders, and severe personality disorders) that significantly interfere with a person's ability to carry out such primary aspects of daily life as self-care, household management, interpersonal relationships, and work or school. It is estimated that at least half of the homeless people who are severely mentally ill also suffer from alcohol and/or other drug use problems. The Task Force identified this group as having a unique and particularly difficult time escaping from homelessness. This population represents a high percentage of those who have never been successfully engaged in existing service programs. Communities often lack the capacity to serve individuals who suffer from both mental illness and addictive disorders.

Program Goals

The long-term goal of the Access to Community Care and Effective Services and Supports (ACCESS) program is to foster enduring partnerships that will improve the integration of existing Federal, State, local and voluntary services to homeless people. The more immediate goal is to identify promising approaches to services integration and to evaluate their effectiveness in providing services to individuals with severe mental illnesses, particularly those with co-occurring substance use disorders.

Project Requirements

All projects must meet the following requirements:

- Each State applicant must identify two communities to participate in the ACCESS program. The communities could include two different catchment areas or some other defined service areas within a city or county, two towns, two cities, or two counties. The two communities must be matched as closely as possible in terms of the estimated number of homeless individuals with mental illnesses, local housing stock (defined in terms of affordability, including availability of subsidized housing, vacancy rates, and physical conditions), population size, median income, and type of community (e.g., rural, urban, suburban). Identifying two communities is required to assess the impact of services integration approaches on agencies and client outcomes.
- Both communities should be able to enroll each year 75 to 100 homeless persons with mental illnesses, including those with co-occurring substance use disorders. Individuals who are currently identified as clients by the mental health agency should not be included in this total. Because of expected delays in project start-up during the first year, it is assumed that fewer people will be enrolled during the first year. Therefore, communities will be expected to enroll 300 to 400 persons during this five year program. Enrollment occurs when the homeless person signs a written statement indicating willingness to accept case management services and participate in the evaluation study.
- One community will serve as the services integration site and will receive funds (no less than 10% and no more than 15% of the total grant amount) to develop and implement a services integration approach that engages or leverages other agencies in providing essential services (see Potential Integration Approaches which follows). As documented in Outcasts on Main Street, these services include assertive outreach, case management, housing, mental health treatment, substance abuse treatment, health care, income support and benefits, rehabilitation, vocational training and employment assistance, consumer and family involvement, and legal protection.

In a services integration site, a homeless person with a severe mental illness should be able to enter by any service "door", be assessed, and obtain access to the full complement of services that individual wants and needs—both immediately and on an ongoing basis.

- The second community will serve as the comparison site. Available grant funds will be allocated between the comparison site and the services integration site so that each has comparable levels of assertive outreach and case management in order to enroll and serve 75 to 100 homeless persons annually in the ACCESS program. Any remaining funds may be split between the two communities to address other gaps in services for the population.
- The application is to include both a services integration plan and a "non-integrated" plan for each community. In other words, the application must include a plan for implementing services integration as well as a plan for providing services only in each of the communities. All four plans should be culturally and ethnically appropriate for the respective communities. The communities must be directly involved in designing the services integration approaches that may be implemented in their jurisdiction as well as the services that will be provided.
Applicants must agree to have CMHS randomly determine which community will be selected as the services integration site and which community will be the comparison site. In addition, the communities must agree to implement the service condition to which CMHS assigns them, participate in the cross-site evaluation, submit quarterly evaluation reports and participate on a coordinating committee for the ACCESS program.

The State, in cooperation with local governments, must assist the communities in developing the two services integration approaches and in designating the mental health agencies that will have primary responsibility for the implementation of the projects. In addition, the State must facilitate the implementation of the plans in the services integration site and the comparison site, provide administrative oversight of the entire project, participate on a national coordinating committee for the ACCESS program, and other activities as necessary.

The applicant must describe how the proposed services integration strategies are consistent with the State's comprehensive community mental health services plan (in accordance with the requirements of Title II, Section 1912 of Public Law 102–321, The ADAMHA Reorganization Act), and with the local Comprehensive Housing Affordability Strategy (CHAS) plan (as defined by Pub. L. 101–625, The Cranston-Gonzalez National Affordable Housing Act).

The Social Security Administration (SSA) has agreed to implement special procedures for expediting the processing of Social Security Income (SSI) disability claims and to provide SSI program waivers for counting income in-kind support, maintenance and resource limits. Communities are expected to indicate commitment in pursuing these benefits.

At a minimum, the applicant must include State and local mental health and substance abuse treatment, housing, health care, and income supports and entitlement programs in the proposed services integration approaches. An explanation of how mental health and substance abuse treatment, housing, health care, and income supports and entitlements will be provided must be described in each services integration approach.

Letters are required from State and local representatives of mental health, substance abuse, housing, health care and income supports and entitlement agencies describing their commitment to this project. Letters are also required from the local housing authorities in each community assuring that the housing plans are consistent with the CHAS, and from the Governor and officials of the appropriate local governments (e.g., mayor, county director) indicating their support for the project.

Potential Integration Approaches

All applications should identify services integration approaches that establish linkages among State and local mental health agencies, substance abuse agencies, housing programs, health care programs, and income support and entitlement programs. Examples of State and local activities that might be included in an overall services integration plan are the following:

- Intergency agreements to make or accept referrals, share client or program information, or jointly administer programs;
- Establishment of non-categorical funds that allow for flexibility in funding;
- Creation of service coalitions or task forces;
- Program and agency consolidation;
- Joint funding of programs;
- Creative use of mainstream and targeted Federal resources and State, local and private funds relevant to the needs of the target population;
- Co-application/co-eligibility procedures, e.g., using a single form or procedure to determine eligibility for two or more separate programs in order to simplify the application process, lessen the paperwork burden, and provide a broader range of services for clients;
- Use of special waiver authorities;
- Coordination of State or local level housing and human service planning initiatives;
- Intergency team case management in which different agencies or departments form joint or jointly-trained teams;
- Co-location of multiple services and/or service providers at one facility;
- Multi-agency client information and referral systems; and
- Cross-training.

Agency and Client-level Outcomes

Services integration strategies should be directed towards creating a local service system that is client-centered, inclusive, accessible, comprehensive, continuous and accountable.

Agency-level outcomes that result from an integrated service system include, but are not limited to the following:

- Multiple portals of entry into the system for clients;
- Enduring inter-agency partnerships;
- Clear delineation of responsibility, authority and accountability;
- Coordination of interagency resources;
- Comprehensive approach to individual clients; and
- Comprehensive range of services that are accessible and continuous.

Effective changes in the organization and operation of agencies should be designed to positively affect clients. Client-level outcomes that might result from an integrated service system include an increase in:

- The proportion of persons who remain engaged in mental health and substance abuse treatment;
- The number of persons receiving all or most of the income support and entitlements and benefits for which they are eligible;
- Access to and utilization of safe, clean, appropriate, and affordable housing and improved residential stability;
- Participation in such programs as primary health care, rehabilitation, vocational training, employment assistance, and competitive employment; and
- Client satisfaction with services and subjective improvement in quality of life.

Ultimately an integrated service system should increase the likelihood that individuals, regardless of changes in their clinical condition, are sustained in their housing, have access to necessary services and supports, have opportunities for meaningful employment and social relations, and are empowered to make choices and accept responsibility in matters affecting their lives.

Eligibility Requirements

Applicants must be State mental health authorities or the equivalent in the District of Columbia, Puerto Rico, Guam, other territories and Indian Tribes. Eligibility is restricted in order to maximize cooperation necessary to implement the cooperative agreement. Collaborative arrangements or consortia are encouraged where the State mental health authority is the lead and legal recipient of funds, with housing and human resource agencies as partners in the application. It is anticipated that the high degree of State and local government involvement in these projects will facilitate planning and integration of services, as well as State support of systemic improvements in selected sites after Federal support for the program is no longer available.

Since grant funds will be used in part to bring homeless persons into service settings to address their needs, the
The grantee is expected to maintain their service commitment to these individuals beyond the period of Federal support.

**Availability of Funds**

It is estimated that approximately $17 million will be available to support eight to ten (8-10) awards under this RFA in FY 1993. Actual funding levels will depend upon the availability of funds at the time of the award.

**Period of Support**

Support may be requested for five (5) years. Annual awards will be made subject to continued availability of funds and successful implementation of the proposal. Because funding for this program is expected to remain level, applicants should ask for roughly the same amount of funding (including direct and indirect) during each of the five years of the project. Applicants are encouraged to obtain State and local funding and in-kind support to supplement project funds.

**Special Requirements**

**Supplementation of Existing Funds**

The award recipients may not use funds awarded under this RFA to replace funds that are currently supporting or are committed to support activities proposed in the application. A letter from the sponsoring institution/agency (including State and local government) that certifies that Federal funds will not be used to supplement or replace funds already committed for proposed projects must be included in the appendices.

**Rapid Award of Federal Funds**

The CMHS places considerable emphasis on rapid award of Federal funds by the State and implementation of individual projects by the State and local government. Therefore, CMHS will give funding priority to projects in those States that provide a written assurance that funds will be awarded to subrecipients within two (2) months following the date of Federal grant award. Priority consideration will be given to States whose past performance demonstrates rapid deployment of funds to subrecipients and to those States that have the history/track record of rapid award of CMHS and/or NIMH grant funds. For States that wish to make such an assurance, a letter from the Director of the State applicant agency certifying rapid obligation of funds following the date of grant award must be included in the appendices.

**Letters of Intent**

State mental health authorities planning to submit an application in response to this RFA are requested to submit a letter of intent 60 days prior to the receipt date. Such notification will be used by CMHS for purpose of review and program planning. This letter is voluntary and does not obligate the organization to submit an application. The letter should be no longer than one page and should succinctly indicate:

- The number and title of the RFA
- The name of the potential applicant State
- The name and affiliation of the proposed project director, i.e., the individual assigned to coordinate the development and conduct of the project
- The overall scope of the proposed project, including names of the two communities and a brief description of the likely goals and objectives.

Letters of intent should be directed to:

Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 11C-26, Rockville, Maryland 20857, ATTN: ACCESS/Letter of Intent.

**Coordination with Other Federal/Non-Federal Programs**

Examples of Federal agencies and programs with which applicants may find coordination productive include:

- Department of Health and Human Services
  - Substance Abuse and Mental Health Services Administration:
    - Center for Mental Health Services Community Support Program
    - Projects for Assistance in Transition from Homelessness
    - Refugee Mental Health Program
    - Emergency Mental Health Services Program
    - Center for Substance Abuse Treatment
      - Drug Abuse Treatment Improvement Projects
      - Grants for Substance Abuse Treatment in State and Local Criminal Justice Systems
    - Center for Substance Abuse Prevention
      - Communication Programs for the Prevention of Illegal Drug Use or Illegal Use of Abuse of Alcohol

- Social Security Administration
  - National Institutes of Health
    - National Institute of Mental Health
    - National Institute on Alcohol Abuse and Alcoholism
    - National Institute on Drug Abuse
    - Health Care Financing Administration Medicaid
    - Health Resources and Services Administration

- Health Care for the Homeless Program
- Health Care in Public Housing Program
- Center for Disease Control
- Indian Health Service
- Other Federal Departments
  - Department of Agriculture
  - Food Stamps
  - USDA Food Programs
  - Farmers Home Administration
  - Surplus Property
  - Department of Education
  - Adult Education for the Homeless Program
  - Department of Housing and Urban Development
  - Shelter Plus Care
  - Supportive Housing Program-Permanent Housing for Handicapped Homeless
  - Supportive Housing Program-Transitional Housing
- Section 8 Moderate Rehabilitation Assistance for SRO Dwellings
- Housing Opportunities for Persons with AIDS
- Emergency Shelter Grants Program
- Supplemental Assistance for Facilities to Assist the Homeless
- Section 202/811 Comprehensive Housing Affordability Strategy
- Title V Surplus Properties
- Department of Labor
- Job Training for the Homeless Demonstration Program
- Homeless Veterans Reintegration Projects

**Intergovernmental Review (E.O. 12372)**

Applications submitted in response to this RFA are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through HHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review and comment on applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instruction on the State's applicable procedure. A current listing of SPOCs is included in the applicant kit. The SPOC should send any state process recommendations to the following address: Roger Straw, Ph.D., Acting Director, Office of Evaluation, Extramural Policy & Review, Center for Mental Health Services, 5600 Fishers Lane, room 11C-26, Rockville, Maryland 20857, ATTN: SPOC. The due date for State process recommendations is no later than 60 days following the date of this RFA.
Inclusion of Women and Minorities

The CMHS urges applicants to give added attention (where feasible and appropriate) to the inclusion of racial/ethnic minority groups and women in the program. If they are not included, a clear rationale for exclusion should be provided. Racial/ethnic minority group and gender differences should be described and addressed in the application.

Evaluation

The CMHS will be responsible for conducting a cross-site evaluation that will include both formative/process and outcome evaluations. The purpose of the evaluation is to describe the different services integration approaches and to assess whether different services integration strategies result in measurable changes in the performance of agencies involved in the integration effort as well as client outcomes. In addition, the evaluation will document any changes that occurred in the comparison sites so as to identify potential explanations that challenge the services integration approach as the source of change. The evaluation will be conducted by contractors paid by and accountable to CMHS. All grantees and their subrecipients will be required to participate in this evaluation. CMHS will obtain OMB clearance of evaluation data collection plans prior to their implementation. These plans will include required common data elements across sites.

The grantees will provide 4 FTE staff who will collect process and outcome data and input data at both sites. These costs should be included in the application budget and account for between 10% and 15% of total costs. The applicant must provide assurances that the staff from all the relevant agencies will cooperate fully in the evaluation.

Participation Protection

Applicants and awardees are expected to implement procedures developed by CMHS and approved by an Institutional Review Board (IRB) that address confidentiality, informed consent and other ethical issues pertinent to the protection of participants in proposed projects.

Application Procedures

All applicants must use application form PHS 5161-1 (Rev. July, 1992), which contains Standard Form 424 (face page). The following information should be typed in Item Number 10 on the face page of the applicant form: ACCESS Cooperative Agreements.

Grant application kits (including Form PHS 5161-1 with Standard Form 424, complete application procedures, and accompanying guidance materials for the narrative approved under OMB No. 0937-0189) may be obtained from: Homeless Program Section, Adult Serious Mental Illnesses Branch, Division of Demonstration Programs, Center for Mental Services, 5600 Fishers Lane, room 7C-08, Rockville, MD 20857, (301) 443-3706.

Applicants must submit: (1) An original copy signed by the authorized official of the applicant organization, with the appropriate appendices; and (2) two additional legible copies of the application and all appendices to the following address: Center for Mental Health Services, Division of Research Grants, NIH, Westwood Building, room 240, 5333 Westbard Avenue, Bethesda, Maryland 20892.* Only one application seeking Public Health Service (PHS) support for the same programmatic service demonstration activities with the same population may be submitted to the PHS, and that same application may be submitted in response to only one PHS Program Announcement or Request for Applications.

Application Characteristics

Applications must be complete and contain all information needed for review. Except where otherwise required by these instructions, no supplementary or corrective material will be accepted after the receipt date unless specifically requested by or agreed to in prior discussion with the Review Administrator of the Initial Review Group assigned to review the application. Because there is no guarantee that such late material will be considered for review, it is important that the application be complete at the time of submission.

The original and 2 copies (including appendices) must be unbound with no staples, paper clips, fasteners, or heavy or lightweight paper stock within the document itself. The application will be reproduced in order to provide sufficient copies for review. Do not include anything that cannot be photocopied using automatic processors. Do not attach or include anything stapled, folded, pasted, or in a size other than 8½ x 11” on white paper. Heavy or lightweight paper will clog the photocopy machine and could be destroyed by the machine. Only one side should have printing. Odd sized

*If an oversight carrier or express mail is used, the Zip Code is 20816.
Attachments of any kind will not be copied.

Application materials could accidentally get out of order when being reproduced, thus every sheet of the proposal must have a page number. It is requested that pages be numbered consecutively from beginning to end (for example, page 1 for the cover page, page 2 for the Abstract, etc.) The appendices should be labeled and separated from the narrative and budget section, and the page numbers continued in the sequence. Appendix material should not be used to extend the narrative portions of the applications. Do not include excessive or over-sized material, e.g., posters. Do not use photo reduction or condense type closer than 15 characters per inch.

Application Receipt and Review Schedule

The schedule for receipt and review of applications under this announcement is as follows:

<table>
<thead>
<tr>
<th>Receipt date</th>
<th>IRG review</th>
<th>Council review</th>
<th>Earliest start date</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 17, 1993</td>
<td>August 1993</td>
<td>September 1993</td>
<td>September 1993</td>
</tr>
</tbody>
</table>

The DRG system requires that applications must be received by the published application receipt date(s). However, an application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following work day.

Consequences of Late Submission

Applications received after the above receipt date will not be accepted and will be returned to the applicant without review.

Review Process

Applications submitted in response to this RFA will be reviewed for technical merit in accordance with established PHS/Substance Abuse Mental Health Services Administration (SAMHSA) peer review procedures for grants. The Division of Research Grants, NIH, serves as a central point for the receipt of applications. Applications will be screened for completeness and compliance with instructions for submission. An application will not be accepted for review and will be returned to the applicant if:

- It is received after the specified receipt date.
- It is incomplete.
- It is illegible.
- It exceeds the specified page limits.
- It does not conform to instructions for format, which include that it be typed single-spaced, using standard size black type not smaller than 15 characters per inch or 2.5 centimeters, one column per page, with conventional border margins (1 inch or 2.5 centimeters), on only one side of standard size 8½ x 11 paper that can be photocopied.
- It is non-responsive to the announcement.
- The material presented is insufficient to permit an adequate review (e.g., an incomplete or clearly inadequate evaluation plan).
- Returned applications may not be resubmitted due to the single receipt date of this RFA.
- Applications that are accepted for review will be assigned to an Initial Review Group (IRG) composed primarily of non-Federal experts.
- Notification of the IRG recommendation will be sent to the applicant upon completion of the initial review.
- In addition, the IRG recommendations on technical merit of applications will undergo a second level of review by the appropriate advisory council, once established, whose review may be based on policy considerations as well as technical merit.

Review Criteria

Each grant application is evaluated on its own merits. The following are the review criteria that will be used:

- Significance of Project Plans
  - Potential significance and generalizability of the services integration plans of each site.
  - Adequacy and appropriateness of the proposed services integration approaches to each site.
  - Adequacy and appropriateness of the proposed "non-integrated" services plans to each site.

- Feasibility, Capability, and Commitment to Project
  - Feasibility of implementing the proposed project.
  - Qualifications and experience of applicant organization, State project coordinator, project director at each site, and other key personnel.
  - Specific letters of commitments from proposed collaborators including relevant public, private, and nonprofit stakeholders to participate in all aspects of the program.

Comparability of Communities

- Comparability of the two communities in terms of estimated number of homeless individuals with mental illnesses, local housing stock (defined in terms of affordability, including availability of subsidized housing, vacancy rates, and physical conditions), population size, median income, and type of community (e.g., rural, urban, suburban).
- Evidence of access to, and availability of, appropriate and adequate target populations.

Reasonableness of Resource Allocation

- Adequacy of available resources.
- Appropriateness of the proposed budget for the implementation of the integration plan at each site.
- Reasonableness of the proposed budget and justification of how it creates equivalent levels of services across the two sites.

Award Criteria

Applications recommended for approval by the IRG and the appropriate advisory council, if established, will be considered for funding on the basis of overall technical merit as determined through the review process. In some cases, pre-award site visits may be conducted to gather additional information. Other award criteria will include:

- Availability of funds.
- Geographic distribution.
- Focus on racial/ethnic minority populations, and women.
- Numbers of people to be served.
- Cooperation in the evaluation activities.
- Use of new or redirected Federal, State, local, private, and voluntary funds, including leveraging of funds.
- Rapid award of Federal funds.

Terms and Conditions of Support

Allowable Items of Expenditure

Grant funds may be used only for expenses clearly related and necessary to carry out the approved activities, including both direct costs that can be specifically identified with the project and allowable indirect costs. In order to recover allowable indirect costs of a project, it may be necessary to negotiate and establish an indirect cost rate (unless such a rate has already been established for the applicant organization). For information and assistance regarding the timing and submission of an indirect cost rate proposal, applicants should contact the appropriate office of the DHHS Division of PHS/OP.

Cost Allocation referenced in the list of "Offices Negotiating Indirect Cost Rates," included in the application kit.
Funds cannot be used to supplant current funding for existing activities (see section on Supplantation of Existing Funds). Allowable items of expenditure for which grant support may be requested include:

- Salaries, wages, and fringe benefits of professional and other supporting staff engaged in the project activities;
- Travel directly related to carrying out service activities under the approved project;
- Supplies, communications, and rental of equipment and space directly related to approved project activities;
- Contracts for performance of activities under the approved project; and
- Other such items necessary to support approved project activities.

Funds cannot be used for the purchase of a facility to house any portion of the proposed program. Any funds proposed to be utilized for renovation expenses must be detailed and linked directly to programmatic activities. Any lease arrangements in association with the proposed program utilizing PHS funds may not extend beyond the project period or cover non-programmatic activities.

Grant funds may not be used to pay for inpatient detoxification or treatment, or to purchase housing. However, funds may be used to pay for one-time rental assistance.

Alterations and Renovations

Costs for alterations and renovations (A&R) will be allowable only where such alterations and renovations are necessary for the success of the program. However, as subject to the PHS Grants Policy Statement, the maximum amount of funds budgeted or used for A&R under a single grant during three consecutive budget periods (whether or not the 3 years overlap two distinct competitive segments of support) cannot exceed the lesser of $150,000 or 25% of the total funds reasonably expected to be awarded by the PHS for direct costs for such three-year period. (The maximum amount of PH5 grant funds that may be applied to any single A&R project is $150,000.) Construction costs are not allowed.

Administrative Costs

No less than 95 percent of the total direct costs awarded to each State must be allocated to the subrecipients. The State may recover the lesser of its actual costs of administration (direct and indirect costs) of the grant, or 5 percent of the total direct costs of awards made to subrecipients within the State. This amount should cover personnel, travel and other related costs associated with the administration of the grant.

States that own and operate the community mental health system are excepted from the above ruling and will be allowed to retain 100 percent of the grant funds to implement the program. Not more than 5% of the total direct costs may be used to cover the actual costs of administration (direct and indirect costs) of the grant.

Other Costs

A working group comprised of the Project Director from the State applicant agency and Project Coordinators from each of the two communities will meet with CMHS staff to facilitate evaluation research activities and discuss programmatic issues. Applicants should budget for the attendance of the Project Director and the Project Coordinators for each of the communities at three 3-day meetings per year in the Washington, DC area.

Reporting Requirements

Quarterly, annual and final progress reports and financial status reports will be required and specified to awardees in accord with PHS Grants Policy requirements.

Contacts for Additional Information

Questions concerning program issues may be directed to: Frances L. Randolph, Dr. P.H. or Walter Loginski, Ph.D., Homeless Program Section, Adult Serious Mental Illnesses Branch, Division of Demonstration Programs, Center for Mental Health Services, 5600 Fishers Lane, room 7C-08, Rockville, MD 20857, (301) 443-3706.

Questions regarding grants management issues may be directed to: Mr. Steve Hudak, Grants Management Officer, Center for Mental Health Services, 5600 Fishers Lane, room 7C-23, Rockville, MD 20857, (301) 443-4456.

Authority and Regulations

Statutory Authority: Cooperative agreements awarded under this RFA are authorized under Section 520A of the Public Health Service Act, as amended (42 U.S.C. 290bb-32).

Applicable Federal Regulations:
Federal regulations at 45 CFR parts 74 and 92, generic requirements concerning the administration of grants, are applicable to those awards.

PHS Grants Policy Statement: Grants must be administered in accordance with the PHS Grants Policy Statement (Revised October 1, 1990).

Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.125.

Dated: March 31, 1993.

Joseph R. Leone, Acting Deputy Administrator, Substance Abuse, Mental Health and Services Administration.

[FR Doc. 93-7880 Filed 4-5-93; 8:45 am]
BILLING CODE 5160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-065-03-4191-03]

Notice of Intent; Proposed Rand Project, Kern County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management and County of Kern will prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to assess the potential environmental impacts that may be associated with development of the proposed Rand Project. A public scoping meeting has been scheduled in connection with the preparation of that document. Rand Mining, a wholly owned subsidiary of Glamis Gold Inc., has filed applications with the Bureau and County for development of an open-pit, heap-leach gold mine in the Randburg Area of Kern County, California. The Rand Project is located approximately 20 miles south of Ridgecrest, California. The project will ultimately affect approximately 1000 acres, and includes the following activities: mining, construction and operation of the heap-leach processing facilities, construction and maintenance of roads, upgrading of an existing water well field and pipeline, and reclamation of disturbed lands. The EIS/EIR will be prepared by the Bureau and County with the assistance of an independent environmental consulting firm selected by the agencies. The following issues have been preliminarily identified for analysis: Water resources, vegetation and wildlife resources (including special interest species), cultural resources, recreation, visual resources, air quality, and public health and safety. In accordance with the National Environmental Policy Act and California Environmental Quality Act requirements, the EIS/EIR will also consider alternatives to the proposed action. Alternatives and additional issues may be identified as a result of the public scoping process.
This notice is a request for environmental information that you or your organization feels should be addressed in the EIS/EIR. Detailed information may be included in your response. Written comments should be sent to the address below no later than May 6, 1993.

FOR FURTHER INFORMATION CONTACT:

Dated: March 31, 1993.

Lee Delaney,
Area Manager.

[FR Doc. 93-7903 Filed 4-5-93; 8:45 am]

ACTION: Notice of Realty Action (NORA) for proposed land exchange.

SUMMARY: The following described public lands located in Valencia County, New Mexico, have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian
T. 6N., R. 3E., Sec. 7, lots 3 to 5, inclusive; Sec. 12, lots 2 to 4, inclusive; T. 6N., R. 4E., Sec. 3; Sec. 4, N1/2, SE1/4, and E1/4SW1/4; Sec. 5, NW1/4; Sec. 7, lots 1 and 2, E1/4NW1/4, and NE1/4; Sec. 8, lots 3 and 4; Sec. 9, lots 1 to 4, inclusive and NW1/4; Sec. 10, lots 1 to 4 inclusive and NW1/4; Sec. 11, lots 1 to 4 inclusive and NW1/4; Sec. 12 lots 1 to 4 inclusive, NW1/4, and E1/4SW1/4.

T. 7N., R. 4E., Sec. 25, SE1/4; Sec. 26, lots 1 to 4 inclusive, S1/2N1/2, and S1/4; Sec. 27, lots 1 to 4 inclusive, S1/2N1/2, and S1/4; Sec. 28, lots 1 to 3 inclusive and SW1/4SW1/4; Sec. 33; Sec. 35, W1/4SW1/4 and E1/4NW1/4, Containing 5,845.87 acres.

DATES: Comments must be received by May 21, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM, 1717 West Second Street, Roswell, New Mexico, 88201.

FOR FURTHER INFORMATION CONTACT:
R.71W., Sec. 5, NW1/2; Sec. 6, SE1/4; Sec. 7, lots 1 to 4 inclusive, NW1/4; Sec. 10, lots 1 to 4 inclusive and NW1/4; Sec. 11, lots 1 to 4 inclusive and NW1/4; Sec. 12 lots 1 to 4 inclusive, NW1/4, and E1/4SW1/4.

T. 8N., R. 71W., Section 8: Lots 171 and 183.

The site contains approximately 9.07 acres.

The Sunshine Fire Protection District has filed an application for this site for use as a fire station.

DATES: Until May 24, 1993, interested parties may submit comments on this action.

ADDRESSES: Comments should be directed to the Canon City District Manager, BLM, P.O. Box 2200, Canon City, CO 81213-2200.

FOR FURTHER INFORMATION CONTACT:
Priscilla Mclain at (303) 239-3712.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of any objections this proposal will become final.

Donnis R. Sparks,
District Manager.

[FR Doc. 93-7903 Filed 4-5-93; 8:45 am]

BILLING CODE 4310-JB-44

[NM-060-03-4210-04; NMHM 82227]

Realty Action, Exchange, Valencia County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action (NORA) for proposed land exchange.

SUMMARY: The following described public lands located in Valencia County, New Mexico, has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian
T. 6N., R. 3E., Sec. 7, lots 3 to 5, inclusive; Sec. 12, lots 2 to 4, inclusive; T. 6N., R. 4E., Sec. 3; Sec. 4, N1/2, SE1/4, and E1/4SW1/4; Sec. 5, NW1/4; Sec. 7, lots 1 and 2, E1/4NW1/4, and NE1/4; Sec. 8, lots 3 and 4; Sec. 9, lots 1 to 4, inclusive and NW1/4; Sec. 10, lots 1 to 4 inclusive and NW1/4; Sec. 11, lots 1 to 4 inclusive and NW1/4; Sec. 12 lots 1 to 4 inclusive, NW1/4, and E1/4SW1/4.

T. 7N., R. 4E., Sec. 25, SE1/4; Sec. 26, lots 1 to 4 inclusive, S1/2N1/2, and S1/4; Sec. 27, lots 1 to 4 inclusive, S1/2N1/2, and S1/4; Sec. 28, lots 1 to 3 inclusive and SW1/4SW1/4; Sec. 33; Sec. 35, W1/4SW1/4 and E1/4NW1/4, Containing 5,845.87 acres.

DATES: Comments must be received by May 21, 1993.

ADDRESSES: Comments should be sent to the District Manager, BLM, 1717 West Second Street, Roswell, New Mexico, 88201.

FOR FURTHER INFORMATION CONTACT:
Hans Sellani, BLM, Roswell Resource Area, 505-624-1790.

SUPPLEMENTARY INFORMATION: The above described land is a part of the previously-noticed Rio Bonito Exchange. This notice includes the Valencia County public lands in the Exchange as selected lands. The parties to the Exchange, as well as the terms and conditions of the Exchange, are fully described in previous Federal Register notices. The NORA for the Rio Bonito Exchange was published in the Federal Register on Thursday, April 9, 1992, at 12332, of Vol. 57, No. 69, and amended in the Federal Register on Wednesday, May 13, 1992, at 20503, of Vol. 57, No. 93, and corrected in the Federal Register on Tuesday, May 19, 1992, at 21332, Vol. 57, No. 97. The Exchange is scheduled to occur prior to the end of 1993.

The BLM has prepared an Environmental Assessment to address impacts of the Exchange and this document is available for review. The Exchange is in conformance with the Rio Puerco Resource Management Plan and the Ameded West Roswell Management Framework Plan but not with Lincoln County's Interim Land Use Plan of January 14, 1992.

Lands transferred from the United States will contain the following patent reservations:
1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.
2. The reservation to the United States of all minerals in the land.
3. A reservation to the United States, U.S. Forest Service, for access to the Cibola National Forest boundary at Lolito Springs.

The land will be conveyed subject to all valid existing rights, rights-of-way, easements, and leases of record, including a Federal grazing lease issued to Cordova Ranch Partnership for Allotment 0447 on March 1, 1992, for a term of 10 years. A Notice to cancel this grazing lease was issued on December 8, 1992, and the grazing lease may be cancelled by the BLM any time after December 8, 1994, in accordance with the Notice and 43 Code of Federal Regulations 4110.4-2(b). The rights of the United States as lessee of the lease will be reserved until the lease terminates or is cancelled or relinquished.

Publication of this notice in the Federal Register will segregate the public land from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon issuance of patent or 2 years from the date of this notice or upon publication of a termination of segregation.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may...
submit comments to the Roswell District Manager at the above address. Any objections will be reviewed by the State Director, Santa Fe, New Mexico, who may sustain, vacate, or modify this realy action. In the absence of any objections, this NORA will become the final determination of the Department of the Interior.

Dated: March 26, 1993.

Leslie M. Cone,
District Manager.

[FR Doc. 93-7905 Filed 4-5-93; 8:45 am]
BILLING CODE 4310-FR-H

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Box Elder Resource Management Plan (RMP) and prepare the associated Environmental Assessment (EA), which includes public lands in Box Elder County, Utah.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before May 6, 1993.

FOR FURTHER INFORMATION CONTACT: Loom Berggren, Bear River Resource Area Manager, Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City, UT 84119, telephone (801) 977-4300.

SUPPLEMENTARY INFORMATION: This notice is intended to inform the public of the planning effort and to invite public participation in the identification of the planning issues. Public comment will be solicited throughout the planning process. The amended Box Elder RMP will be prepared under 43 CFR part 1610, to meet the requirements of section 202 of the Federal Land Policy and Management Act. Decisions generated during this planning process will supersede the decisions in the 1985 Box Elder RMP. The Box Elder RMP manages mineral interests on other public lands.

The RMP amendment and EA will address the general planning issue of management prescriptions for acquired lands. In addition, there are two specific acquired areas to be addressed in the plan amendment; first is the Central Pacific Railroad Grade between the area 6 miles west of Corrine and the Golden Spiks National Historic Site. It is proposed that this extension would be managed as a bicycle trail or for other nonmotorized use only. The second is a block of land known as the “Choumos Block,” which will be acquired for its valuable wildlife habitat. There are no plans to allocate livestock forage permanently within the block. There may be an opportunity for primitive recreation sites, but off-highway vehicles may be limited to existing or designated roads and trails.

Public participation is being sought at this initial stage in the planning process to ensure the RMP amendment addresses all issues, problems, and concerns from those interested in the management of lands within the Bear River Resource Area. Necessary amendments to the approved plan will keep the document current and viable.

G. William Lamb,
Acting State Director.

[FR Doc. 93-7933 Filed 4-5-93; 8:45 am]
BILLING CODE 4310-DG-H

National Park Service

Gettysburg National Military Park Advisory Commission


ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the next meeting of the Gettysburg National Military Park Advisory Commission.


TIME: 2 p.m.–4 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Holiday Inn, 516 Baltimore Street, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-Committee Reports, briefings on the results of the Deer EIS scoping meetings and Gettysburg’s portion of the Economic Stimulus Program, and an operational update on the park.

FOR FURTHER INFORMATION CONTACT: Jose A. Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 95 Taneytown Road, Gettysburg, Pennsylvania 17325.

Charles P. Clapper,
Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 93-7882 Filed 4-5-93; 8:45 am]
BILLING CODE 4310-70-M

National Register of Historic Places;
Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 27, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 21, 1993.

Beth L. Savage,
Acting Chief of Registration, National Register.

ALASKA

Anchorage Borough-Census Area

Anchorage Cemetery, 535 E. 9th Ave., Anchorage, 93000320

Ketchikan Gateway Borough-Census Area

Chief Kashakes House, Mile 2.5 S. Tongass Hwy., Saxman, 93000338
The Star, 5 Creek St., Ketchikan, 93000336

Matanuska-Susitna Borough-Census Area

Talkeetna Historic District, Roughly bounded by C, First, D and Front Sts., Talkeetna, 93000321

ARIZONA

Maricopa County

Curtis Cottage (Prescott Territorial Buildings MHA), 125 S. McCormick, Prescott, 93000344

FLORIDA

Marion County

Lake Weir Yacht Club, New York Ave., Eastlake Weir, 93000319

Volusia County
El Pino Parque Historic District, 1412-1604 N. Halifax Dr., Daytona, 93000318

ILLINOIS

La Salle County
O’Connor, Andrew J., Ill, House, 637 Chapel St., Ottawa, 93000324

Mason County
Havana Water Tower, Jct. of Pearl and Main Sts., NE corner, Havana, 93000328

IOWA

Dee Moines County

Regional Water Tower, 205 Quay St., Des Moines, 93000320
DEPARTMENT OF LABOR
Employment and Training Administration

TA-W-26,041, TA-W-26,041A

Nerco Oil and Gas, Inc., Vancouver, WA and Portland, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reconsideration applicable to all workers of the subject firm in Vancouver, Washington. The Notice was published in the Federal Register on October 11, 1991 (56 FR 51405). The Department is correcting the subject certification to include the Vancouver headquarters workers who were transferred to Portland, Oregon prior to their layoff.

The intent of the Department's certification is to include all workers of Nerco Oil and Gas, Inc., Vancouver, Washington who were affected by increased imports of crude oil and natural gas.

The amended notice applicable to TA-W-26,014 is hereby issued as follows:

"All workers of Nerco Oil and Gas, Inc., Vancouver, Washington and Portland, Oregon who became totally or partially separated from employment on or after January 1, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 26th day of March 1993.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.
Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February & March 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

1. That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.
2. That sales or production, or both, of the firm or subdivision have decreased absolutely, and
3. That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,195; Dover Electronics Co., Conklin, NY
TA-W-28,124; Valeo Climate Control Corp., Fort Worth, TX
TA-W-28,022; ERA Coats, Paterson, NJ
TA-W-28,184; Takata Fabrication Corp., Auburn Hills, MI

(Formerly Known as Takata Fisher, St. Clair Shores, MI)
TA-W-28,140; Paterson Canning Co., Paterson, NJ
TA-W-28,136; Goodyear Tire & Rubber Co., Logan, OH
TA-W-28,156; Fireye, Inc., Derry, NH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,287; Shell Mining Co., Houston, TX
Aggregate imports of products like or directly competitive with coal manufactured at Shell Mining Co was negligible during the relevant period.

TA-W-28,318; Boelens Well Service Limited Liability Co Thermopolis, WY
The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,253; Maxim Engineers, Inc., Dallas, TX
The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,290; Conoco, Inc., Administration, Houston, TX
TA-W-28,291; Conoco, Inc., Marketing, Chattanooga, TN
TA-W-28,292; Conoco, Inc., Refining, Lake Charles, LA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,293; Conoco, Inc., Calcinning, Moundville, WV
TA-W-28,294; Conoco, Inc., Trading, Wichita Falls, TX
TA-W-28,295; Conoco, Inc., Terminals, Elk Grove, CA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,296; Conoco, Inc., Supply, Grapevine, TX
TA-W-28,297; Conoco, Inc., Transportation, Atlanta, GA
TA-W-28,298; Conoco, Inc., Pipeline, Billings, MT

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-28,299; Southern Mechanical, Inc., Franklin, TX
The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,083; Beaver Lumber Co., Inc., Beaver, WA


TA-W-28,286 and TA-W-28,286A; Cox Exploration, Inc., Corpus Christi, TX and Dallas, TX
The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,130 & TA-W-28,131; Wells Oilfield Specialties, Inc., Coalinga, CA, and Bakersfield, CA
The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,238; Baker Hughes Tubular Services a/k/a ICO, Inc., Headquartered in Houston, TX and Operating Out of the Following Locations: A; Casper, WY, B; Edmond, OK C; Odessa, TX, D; Amelia, LA
The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-28,231; The Leslie Fay Co., In., Wilkes Barre, PA
A certification was issued covering all workers separated on or after January 5, 1991.

TA-W-28,038; Pacific Enterprises Oil Co., Wichita Falls, TX
A certification was issued covering all workers separated on or after November 12, 1991.

TA-W-28,125; Florsheim Shoe Co., Anna, IL
A certification was issued covering all workers separated on or after December 1, 1992 and before March 1, 1993.

A certification was issued covering all workers separated on or after January 7, 1992.

TA-W-28,074; Park Avenue Exploration Corp., Oklahoma City, OK
A certification was issued covering all workers separated on or after November 23, 1991.
A certification was issued covering all workers separated on or after November 23, 1991.


A certification was issued covering all workers separated on or after January 15, 1992.

**TA-W-28,419; Norton Drilling Co., Lubbock, TX**

A certification was issued covering all workers engaged in exploration and drilling separated on or after December 2, 1991.

**TA-W-28,216; Cotone, Inc., Jersey City, NJ**

A certification was issued covering all workers engaged in the production of ladies’ coats separated on or after January 5, 1992.

**TA-W-28,322; CHC Girard & Associates, Shreveport, LA**

A certification was issued covering all workers engaged in Drilling, Exploration and production of oil and gas separated on or after January 29, 1992.

**TA-W-28,205; Pioneer Industrial Products, Plant #1, Willard, OH**

A certification was issued covering all workers engaged in the production of Rubber Gloves separated on or after January 6, 1992.

**TA-W-28,302; Relloc Manufacturing Co., Beaveraton, PA**

A certification was issued covering all workers separated on or after January 28, 1992.

**TA-W-28,196; Grayling Oil, Inc., Hobart, OK**

A certification was issued covering all workers separated on or after January 5, 1992.

**TA-W-28,250; Dana Corp., Spicer Transmission, Toledo, OH**

A certification was issued covering all workers engaged in the production of truck transmission parts separated on or after December 19, 1992.

**TA-W-28,303; Obion and Denton, New Albany, MS**

A certification was issued covering all workers engaged in the production of children’s sleepwear separated on or after January 26, 1992.

**TA-W-28,337; Link-Belt Construction Equipment Co., Lexington, KY**

A certification was issued covering all workers engaged in the production of cranes and excavators separated on or after January 4, 1992.

**TA-W-28,143; Dee-Ville Blouse Co., Danielsville, PA and TA-W-28,150; Dee-Ville Fitting, Slatington, PA**

A certification was issued covering all workers engaged in the production of women’s blouses and skirts separated on or after December 28, 1991.

**TA-W-28,111; West Tech, Inc., Van Dale, Inc., Long Lake, MN**

A certification was issued covering all workers engaged in the production of farm machinery separated on or after December 28, 1991.

**TA-W-28,389; Amoco Corp, Information Technology Dept., Chicago, IL**

A certification was issued covering all workers engaged in the production of crude oil and natural gas separated on or after February 22, 1992.

**TA-W-28,066; Lyndhurst Coat, South Hackensack, NJ**

A certification was issued covering all workers engaged in the production of outerwear separated on or after November 10, 1991.

**TA-W-28,180; West Point Pepperell, Inc., Biddeford, ME**

A certification was issued covering all workers engaged in the production of comforters and accessories separated on or after October 29, 1991. It was also determined all workers at the West Point Pepperell, Inc., Biddeford, ME engaged in the production of velox blankets and flocked yardgoods are denied.

**TA-W-28,249; Texaco Exploration and Production, Inc., Velma, OK**

A certification was issued covering all workers engaged in exploration and production of crude oil, natural gas and liquid and natural gas separated on or after January 11, 1992.


A certification was issued covering all workers separated on or after October 27, 1991.

**TA-W-28,101; Harcors Pigments, Inc., Emeryville, CA**

A certification was issued covering all workers separated on or after December 1, 1991.

**TA-W-28,330; Northern Telecom, Inc., Morton Grove, IL**

A certification was issued covering all workers engaged in the production of central office connectors and data collection systems telecommunication equipment separated on or after February 4, 1992.

**TA-W-28,315; National Tel-Tronics Div., (Excluding the assembly Dept.), Meadville, PA**

A certification was issued covering all workers engaged in production of electronic connectors, plastic parts, and cable assemblies separated on or after August 25, 1992.

**TA-W-28,264; National Refractories & Minerals, Magnesia-Plant, Moss Landing, CA**

A certification was issued covering all workers separated on or after January 22, 1992.

I hereby certify that the aforementioned determinations were issued during the months of February and March 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.


Marvin M. Feoks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-7967 Filed 4-5-93; 8:45 am]

BILLING CODE 4510-30-M

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**[TA-W-28,217]**

Five Sons Coats, Jersey City, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 19, 1993 in response to a worker petition which was filed by the International Ladies Garment Workers Union on January 5, 1993 on behalf of workers at Five Sons Coast, Jersey City, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 29th day of March 1993

Marvin M. Feoks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-7966 Filed 4-5-93; 8:45 am]

BILLING CODE 4510-30-M

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**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

**National Endowment for the Humanities**

Agency Information Collection Under OMB Review

**AGENCY:** National Endowment for the Humanities, NEH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the
NRC PRA Technology Subgroup of the Regulatory Review Group; Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of public meeting.

SUMMARY: On January 4, 1993, the executive Director for Operations appointed a Regulatory Review Group. The group is conducting a comprehensive and disciplined review of power reactor regulations and related NRC processes, programs, and practices with special attention placed on the feasibility of substituting unnecessarily prescriptive requirements and guidance with performance based requirements and guidance founded on risk insights. A public meeting is being held to discuss how a PRA can be used to provide more flexibility in the regulations and in the implementation of the regulations. This notice provides the time and place of the meeting and notification that subsequent material will be made available prior to the meeting. Comments are being solicited on this material at the meeting.

DATES: Meeting has been scheduled for May 6, 1993 from 8 am to 1pm.

ADDRESSES: Meeting will be held at the U.S. NRC offices, 11555 Rockville Pike, in room 12B11, in Rockville, Md. Attendees will be required to sign in. Requests to speak on a topic in response to the published material should be sent by mail or facsimile to M.T. Drouin at 3550 Nicholson Lane, MS#324, Rockville, MD 20852, fax (301) 443-7834. To ensure adequate space is reserved for meeting, notification of attendance is appreciated.

FOR FURTHER INFORMATION CONTACT: M.T. Drouin (301) 492-3917.

SUPPLEMENTARY INFORMATION: The material will be placed in the Public Document Room on April 26, 1993. Topics that will be covered in material include:

- Potential Applications of PRA-based Methods. This issue will address such items as—technical specification compliance (e.g., LCO extension, AOTs, STIs), equipment testing, and graded approach to quality assurance.

- Required Conditions for Use of PRA Analyses in Regulation. This issue will address such items as—scope of analysis, acceptable boundary conditions and assumptions, data quality, frequency of PRA update (e.g., need for a “living” PRA), and level of NRC review.

The meeting will commence with the NRC providing introductory remarks, statements on the objectives of the
Regulatory Review Group and the meeting. The NRC does not intend to publish any additional material, other than what is discussed in this notice.

**SUBJECT:** NRC Regulatory Review Group, PRA Subgroup.

Dated at Rockville, Maryland, this 30 day of March 1993.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,
Regulatory Review Group.

[FR Doc. 93-7643 Filed 4-5-93; 8:45 am]
BILLING CODE 7500-01-M

[Docket Nos. 50-334 and 50-412]

Duquesne Light Company; Consideration of issuance of Amendments to Facility Operating Licensees, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-86 and NPF-73 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit Nos. 1 and 2 located in Shippingport, Pennsylvania.

The proposed amendments would modify the Technical Specifications and Bases to allow sleeving at the steam generator tube support plate and tubeshell regions in accordance with processes performed by the vendors, Babcock & Wilcox and Westinghouse.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission’s regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission’s regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation is provided for the no significant hazards consideration standards.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Some steam generator tubes have been found to have a varying amount of wall degradation. When the degradation is extensive, the loss of the internal plugging defective tubes reduces the effectiveness of the steam generators and eventually will reduce the performance of the nuclear steam supply system. An alternative to plugging tubes is installing a sleeve as a new pressure boundary inside the original tube to bridge the degraded area, thus permitting the tubes to remain in service. The integrity of the repaired steam generator tubes will be equivalent to that of the original tube and will allow the tube to continue performing its heat transfer function.

The proposed change allows the installation of steam generator tube sleeves in accordance with the vendor methodologies provided by Babcock & Wilcox. Kinetic welded sleeving process described in NRC approved topical report BAW-2094P, Revision 1 and the Westinghouse laser welded sleeving process described in WCAP-13483, Revision 1, provided for NRC review and acceptance. The sleeve installation process procedures described in BAW-2094P, Revision 1 will be revised to include the kinetic sleeve “tooling” and Installation process parameter changes described in NRC approved BAW-2045PA, Revision 1, January 1992, “Recirculating Steam Generators Kinetic Qualification for ¾ Inch OD Tubes.” These changes were incorporated to resolve field problems or to improve the sleeve installation rate and will not alter the basic installed configuration of the sleeve as described in BAW-2094P, Revision 1. We have reviewed the methodology described in BAW-2094P, Revision 1 and determined that they are applicable to the Beaver Valley units and provide a safe and efficient alternative to plugging. We have reviewed the methodologies described in these vendor reports and determined that they provide a safe and efficient alternative to plugging. Eddy current techniques are capable of providing adequate defect detection and to verify power installation of the sleeve. Available techniques are capable of providing adequate detection and to verify power installation of the sleeve. Available techniques are capable of providing adequate defect sensitivity in the required areas of the tube and sleeve pressure boundary.

Proprietary methods described in the vendor reports with supporting qualification data demonstrate the inservice inspection and to evaluate and if practical, implement testing methods as better methods are developed and qualified for use. The structural integrity of the repaired tube is restored to that of an undegraded tube and the tube and sleeves will be inspected periodically in accordance with the technical specification surveillance requirements. Sleeving does not affect the UFSAR steam generator system. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Both the structural integrity and the heat transfer capability of the steam generators will not be significantly affected by the installation of sleeves. In addition, the sleeves are attached to the inside of the tubes and cannot interact with any of the other plant systems. The sleeves have been analyzed and tested and the repair methods have been evaluated to ensure they satisfy the required design conditions. Sleeving returns the degraded tube to a serviceable condition and the sleeved tube functions in essentially the same manner as the original tube. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The heat transfer capabilities of the steam generators will be improved by utilizing the sleeving process rather than the currently required plugging. Installing sleeves slightly reduces the RCS Bow and heat transfer capabilities, however, this reduction is significantly less than that of tubes that have been plugged. Sleeveing maintains the structural integrity of the steam generators to ensure the RCS pressure boundary is adequate for the expected design conditions, therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee’s analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to
take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and
Directives Branch, Division of Freedom of Information and Publications
Services, Office of Administration, U.S. Nuclear Regulatory Commission,
Washington, DC 20555, and should cite the registration number and page number of
this Federal Register notice. Written comments may also be delivered to
Room P-223, Phillips Building, 7920
Norfolk Avenue, Bethesda, Maryland,
from 7:30 a.m. to 4:15 p.m. Federal
weekdays. Copies of written comments
received may be examined at the NRC
Public Document Room, the Gelman
Building, 2120 L Street, NW.,
Washington, DC 20555.

The filing of requests for hearing and
petitions for leave to intervene is
discussed below.

By May 6, 1993, the licensee may file
a request for a hearing with respect to
issuance of the amendment to the
subject facility operating license and
any person whose interest may be
affected by this proceeding and who
wishes to participate as a party in the
proceeding must file a written request
for a hearing and a petition for leave to intervene. Requests for a hearing and a
petition for leave to intervene shall be
filed in accordance with the
Commission’s “Rules of Practice for
Domestic Licensing Proceedings” in 10
CFR part 2. Interested persons should
consult a current copy of 10 CFR 2.714
which is available at the Commission’s
Public Document Room, the Gelman
Building, 2120 L Street NW.,
Washington, DC 20555 and at the local
public document room located at the
B.F. Jones Memorial Library, 663
Franklin Avenue, Aliquippa,
Pennsylvania 15001. If a request for a
hearing or petition for leave to intervene is filed by the above date, the
Commission or an Atomic Safety and
Licensing Board, designated by the
Commission or by the Chairman of the
Atomic Safety and Licensing Board
Panel, will rule on the request and/or
petition; and the Secretary or the
designated Atomic Safety and Licensing
Board will issue a notice of hearing or
an appropriate order.

As required by 10 CFR 2.714, a
petition for leave to intervene shall set
forth with particularity the interest of
the petitioner in the proceeding, and
how that interest may be affected by the
results of the proceeding. The petition
should specifically explain the reasons
why intervention should be permitted
with particular reference to the
following factors: (1) The nature of the
petitioner’s right under the Act to be
made party to the proceeding; (2) the
nature and extent of the petitioner’s
property, financial, or other interest in
the proceeding; and (3) the possible
effect of any order which may be
entered in the proceeding on the
petitioner’s interest. The petition should
also identify the specific aspect(s) of the
subject matter of the proceeding as to
which petitioner wishes to intervene.
Any person who has filed a petition for
leave to intervene who has been
admitted as a party may amend the
petition without requesting leave of the
Board up to 15 days prior to the first
prehearing conference scheduled in the
proceeding, but such an amended
petition must satisfy the specificity
requirements described above.

Not later than 15 days prior to the first
prehearing conference scheduled in the
proceeding, a petitioner shall file a
supplement to the petition to intervene
which must include a list of the
contentions which are sought to be
litigated in the matter. Each contention
must consist of a specific statement of the
issue of law or fact to be raised or
controverted. In addition, the petitioner
shall provide a brief explanation of the
bases of the contention and a concise
statement of the alleged facts or expert
opinion which support the contention and
on which the petitioner intends to rely
in proving the contention at the
hearing. The petitioner must also
provide references to those specific
sources and documents of which the
petitioner is aware and on which the
petitioner intends to rely to establish
those facts or expert opinion. Petitioner
must provide sufficient information to
show that a genuine dispute exists with
the applicant on a material issue of law
or fact. Contentions shall be limited to
matters within the scope of the
amendment under consideration. The
contention must be one which, if
proven, would entitle the petitioner to
relief. A petitioner who fails to file such
a supplement which satisfies these
requirements with respect to at least one
contention will not be permitted to
participate as a party.

Those permitted to intervene become
parties to the proceeding, subject to any
limitations in the order granting leave to
intervene, and have the opportunity to
participate fully in the conduct of the
hearing, including the opportunity to
present evidence and cross-examine
witnesses.

If a hearing is requested, the
Commission will make a final
determination on the issue of no
significant hazards consideration. The
final determination will serve to decide
when the hearing is held.

If the final determination is that the
amendment request involves no
significant hazards consideration, the
Commission may issue the amendment
and make it immediately effective,
notwithstanding the request for a
hearing. Any hearing held would take
place after issuance of the amendment.

If the final determination is that the
amendment request involves a
significant hazards consideration, any
hearing held would take place before
the issuance of any amendment.

A request for a hearing or a petition
for leave to intervene must be filed with
the Secretary of the Commission, U.S.
Nuclear Regulatory Commission,
Washington, DC 20555, Attention:
Docketing and Services Branch, or may
be delivered to the Commission’s Public
Document Room, the Gelman Building,
2120 L Street, NW.,
Washington, DC 20555, by the above date.

Petitions are filed during the last 10
days of the notice period. It is requested
that the petitioner promptly so inform
the Commission by a toll-free telephone
call to Western Union at 1-(800) 248-
5100 (in Missouri 1-(800) 342-6700).
The Western Union operator should be
given Datagram Identification Number
N1023 and the following message
addressed to Walter R. Butler:
petitioner’s name and telephone
number, date petition was mailed, plant
name, and publication date and page
number of this Federal Register notice.
A copy of the petition should also be
sent to the Office of the General
Counsel, U.S. Nuclear Regulatory
Commission, Washington, DC 20555,
and to Gerald Charnoff, Esquire, Jay E.
Silberg, Esquire, Shaw, Pizzonia, Potts &
Trowbridge, 2300 N Street NW.,
Washington, DC 20037, attorney for the
licensing applicant.

Nontimely filings of petitions for
leave to intervene, amended petitions,
supplemental petitions and/or requests
for hearing will not be entertained
absent a determination by the
Commission, the presiding officer or the
presiding Atomic Safety and Licensing
Board that the petition and/or request
should be granted based upon a
balancing of the factors specified in 10
CFR 2.714(b)(1)(i)-(v) and 2.714(d).

For further details with respect to this
action, see the application for
amendment dated December 30, 1992,
which is available for public inspection
at the Commission’s Public Document
Room, the Gelman Building, 2120 L
Street, NW., Washington, DC 20555 and
at the local public document room
located at the B.F. Jones Memorial
Library, 663 Franklin Avenue,
Aliquippa, Pennsylvania 15001.
Exemption

In the matter of Commonwealth Edison Company (Zion Station, Unit No. 1).

I

The Commonwealth Edison Company (the licensee), is the holder of Facility Operating License No. DEFR-59 which authorizes operation of Zion Station, Unit 1, at a steady-state power level not in excess of 3250 megawatts thermal. The facility consists of a pressurized water reactor located at the licensee's site in Lake County, Illinois. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now and hereafter in effect.

II

In its letter dated January 12, 1993, Commonwealth Edison Company (the licensee) applied for an exemption from the Commission's regulations. The subject exemption is from the requirements of appendix J to 10 CFR part 50, an exemption to conduct Type A tests (Containment Integrated Leak Rate Tests or CILRT) be conducted, at approximately equal intervals during each 10-year service period and that the third of these tests be performed when the plant is shut down for the 10-year plant inservice inspection required by 10 CFR 50.55a.

III

The NRC staff notes that the first CILRT of the second 10-year service period was conducted in March 1988. This represents a test interval of 43 months from the preceding CILRT, which was performed 8 months into the second 10-year service period due to NRC concerns with the validity of the test results from the second and third Type A tests of the first 10-year service period. The second CILRT was conducted in March 1992, 48 months after the first, because the controlling fuel cycle lasted for 29 months due to two major forced outages. The next refueling outage, which is also the 10-year plant inservice inspection outage, is scheduled for October 1993. Since the interval between the last Type A test and the refueling outage date is only 19 months, the licensee proposes to move the next scheduled Type A test to the refueling outage currently scheduled to start in September 1993. The interval between the two successive Type A tests on the unit would then be 43 months. The time interval between CILRT should be about 40 months based on performing three such tests at approximately equal intervals during each 10-year service period. Since refueling outages do not necessarily occur coincident with a 40-month interval, a permissible variation of 10 months (25 percent variation) is typically authorized to permit flexibility in scheduling the CILRT's. For the purpose of performing CILRT, this onetime exemption extends the current service period by approximately 24 months beyond the normal 10-year service period. The NRC staff concludes that the deviation from the scheduling requirements of Section III.D.1.a(1) to conduct three Type A tests during each 10-year service period is not significant, as the interval between two successive tests will be 43 months. Accordingly, the staff finds, for the reasons set forth above, that the subject exemption request meets the underlying purpose of the rule (10 CFR 50.12(a)(2)(i)) to ensure containment integrity, which requires three Type A tests to be conducted in a 10-year period, at approximately equal intervals.

On this basis, the NRC staff notes that the licensee has demonstrated that there are special circumstances present as required by 10 CFR 50.12(a)(2). Further, the staff also finds that extending the service period and conducting the third Type A test during the refueling outage after the one for the 10-year plant inservice inspections will not present an undue risk to the public health and safety. Since the licensee has justified the leaktight integrity of the containment based on previous leakage test results, the staff concludes that a one-time extension of approximately 24 months beyond the 10-year service period will not have a significant safety impact.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants the following exemption with respect to requirements of 10 CFR part 50, appendix J, section III.D.1(a):

For the Zion Nuclear Power Station, Unit 1, the current service period may be extended by approximately 24 months beyond the normal 10-year service period, for the purpose of conducting the third periodic Type A test for the second 10-year service period during the Cycle 14 refueling outage.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (58 FR 16717).

Dated at Rockville, Maryland this 31st day of March 1993.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,
Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

BILLING CODE 7910-01-M

[Docket No. 50-295]
SECURITIES AND EXCHANGE COMMISSION

[Release No. 33-6985, File No. S7-14-93]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference on uniformity of securities laws, and requesting written comments.

SUMMARY: In conjunction with a conference to be held on April 26, 1993, the Commission and the North American Securities Administrators Association, Inc. today announced a request for comments on the proposed agenda for the conference. This meeting is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and federal regulation of securities, to maximize the effectiveness of securities regulation in promoting investor protection, and to reduce burdens on capital formation through increased cooperation between Commission and the state securities regulatory authorities.

DATES: The conference will be held on April 26, 1993. Written comments must be received on or before April 20, 1993 in order to be considered by the conference participants.

ADDRESSES: Written comments should be submitted in triplicate by April 20, 1993 to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 150 5th Street NW., Washington, DC 20549. Comments should refer to File No. 87-14-93 and will be available for public inspection at the Commission’s Public Reference Room, 450 5th Street, NW., Washington, DC 20549.


SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since adoption of the federal regulatory tructure in the Securities Act of 1933 ("Securities Act") 1 Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with the federal securities laws as well as all applicable state regulations. It has long been recognized that there is a need to increase uniformity between federal and state regulatory systems, and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980. 2 Section 19(c) authorizes the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The policy of that section is that there should be greater federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) Minimum uniformity in federal and state standards; (3) Minimum interference with the business of capital formation; and (4) A substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and a reduction in the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1993 meeting will be the tenth such conference.

II. 1993 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA") 3 are planning the 1993 Conference on Federal-State Securities Regulation (the "Conference") to be held April 26, 1993 in Washington, DC. At the Conference, representatives from the Commission and NASAA will form into working groups in the areas of corporation finance, market regulation, investment management, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to representatives of the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhibited discussion. However, each working group, in its discretion, may invite certain self-regulatory organizations to attend and participate in certain sessions.

Representatives of the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments on the issues set forth below. In addition, comment is requested on other appropriate subjects that commenters wish to be included in the Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight, and enforcement.

1. Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congress specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal exemption for limited offerings. Regulation D was adopted by the Commission in March 1982 and, on September 21, 1983, NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to complement Regulation D. ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. Because Regulation D provides the framework for ULOE, NASAA’s assistance in developing proposals to improve Regulation D is extremely important. In recent years the Commission, with NASAA’s cooperation, has adopted significant changes to Regulation D. 4


1 15 U.S.C. 77a et seq.
To date, more than half the states have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE. The conferences will discuss viable options to convince non-participating states to adopt ULOE and to encourage consistency in its use.

b. Small Business Initiative

On July 30, 1992, the Commission adopted a number of important rulemaking changes, often described as the Small Business Initiative, which are designed to improve the overall capacity to help finance new companies, and to provide new opportunities for investors. Among other things, the Commission Small Business Initiative resulted in simplified registration and reporting systems for "small business issuers", generally defined as companies whose revenues are less than $25 million a year. In addition, the ceiling for the Regulation A exemption was raised from $1,500,000 to $5,000,000, and issuers contemplating a Regulation A offering are now permitted to use a written document to "test the waters" for investor interest prior to assuming the expense of an offering. The Commission also eliminated the federal requirement for the use of the Rule 504 exemption under Regulation D, and prohibited the use of this exemption by blank check companies.

The participants will discuss the impact of these changes, and the need for any additional exemptive relief in the small business area. In particular, the participants will consider the effect of the modifications to Rule 504 on the administration of State securities laws, and whether the amended Rule poses difficulties for State regulators working with limited offerings. The participants will also review their experience with Regulation A and, in particular, "test the waters" documents.

Public comment is invited on the efficacy of the Small Business Initiative. Comment is also sought with respect to any other uniform exemptions that might be developed to enhance the ability of issuers to raise capital, while protecting legitimate interests of investors.

c. Disclosure Policy and Standards

The Commission regularly reviews and revises its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination of this effort with the states has been most beneficial. Recently, both the Commission and the states have devoted considerable attention to issues arising from the so-called "roll-up" of limited partnerships. A roll-up usually involves the combination or reorganization of one or more partnerships. The conferences will again consider the special disclosure problems involved in such transactions with emphasis on the disclosure rules adopted by the Commission to improve the quality of information provided to investors. Comment is also sought with respect to other areas where federal-state cooperation in the area of disclosure standards could be of particular significance as well as any ways in which federal-state cooperation could be improved.

d. Multinational Securities Offerings

In June 1991, the Commission and the Canadian Securities Administrators adopted a multijurisdictional disclosure system that permits certain Canadian and U.S. issuers to offer securities, undertake tender offers, and file periodic reports using the disclosure procedures of their home jurisdiction. On September 14, 1992, NASAA endorsed the multijurisdictional disclosure system as originally proposed and called upon its membership to take any action necessary to accommodate the offerings covered by the system within state securities laws. Based upon the information obtained from a survey of securities administrators, NASAA, on August 30, 1990, adopted Model Rules to the Uniform Securities Act (1956) and recommended their adoption to the membership, where necessary to accommodate the Canadian multijurisdictional system.

Current developments relating to the multijurisdictional disclosure system and to the actions taken by the states in connection therewith will be discussed at the conference.

On June 5, 1991, the Commission published for comment an exemptive rule, a registration form and an order that would permit tender offers, exchange offers and business combinations relating to a foreign issuer's securities to proceed in the United States on the basis of the applicable regulation of the target company's home jurisdiction, where a small percentage of the shares sought are held of record by U.S. holders. Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

(2) Market Regulation Issues

a. Central Registration Depository ("CRD")

The CRD is a computerized filing and data processing system operated by the NASD that maintains information concerning NASD member broker-dealers and their registered personnel for access by state regulators and self-regulatory organizations. It permits a broker-dealer to make one filing and for the information in that filing to be communicated electronically to the appropriate state regulators. Effective January 25, 1993, the Commission commenced full participation in the CRD by accepting filing of broker-dealer registration filings and amendments (Form BD) and requests for withdrawal (Form BDW) through the system, thereby providing for "one stop filing" and eliminating the need for firms to file paper copies with the Commission. Commission participation in the system will also result in the inclusion in the CRD of approximately 3000 registered broker-dealers that are not currently included because they are not members of the NASD. The participants will discuss the SEC's participation in the CRD and the plans for phased implementation of non-NASD broker-dealers. The participants will also discuss the current project initiated by the NASD to redesign and upgrade the CRD system.

b. Customer Complaint System

Last year, the staff of the Commission, NASAA, and the NASD reached an understanding reconciling the Commission's and NASAA's differing interpretations of the word "proceeding" as used in Item 7(G) of Form BD. Based on this understanding, a definition of "proceeding" was added to Form BD. As part of the
understanding, the Commission and the NASD agreed to provide state securities regulators with their customer complaint information through an NASD database accessible through the CRD. The Commission and NASD participants will discuss the current operation of the customer complaint system and any problems that have arisen.

c. Penny Stock Practices
In May 1992, the Commission adopted new penny stock rules designed to provide customers with additional information about the penny stock markets and the penny stock dealer recommending to them a penny stock transaction. These rules, Rule 3a51-1, Rules 15g-1 through 15g-6, and Schedule 15G under the Exchange Act, all were effective as of January 1, 1993. The conferees will discuss the operation of these and other penny stock rules, including the Commission’s cold calling rule, Rule 15c2-6, and whether the scope of the rules is appropriate. The conferees also will discuss how penny stock dealers are adapting their practices in response to the rules.

d. Sales of Securities by Financial Institutions
In response to the fall in interest rates, banks and other financial institutions have suffered large outflows of funds from certificates of deposit and other savings vehicles. As a result, financial institutions have sought to offer mutual funds and other securities services to their customers, either directly or through arrangements with broker-dealers. The conferees will discuss these developments, any concerns raised by sales of securities to the customers of financial institutions, and possible responses available to the conferees.

e. Small Business Listing Standards
Several national securities exchanges have submitted proposals to the Commission to create a second tier of listing standards for small issuers. The second tier standards generally are substantially lower than the regular listing standards in most categories (such as outstanding float, number of shareholders, total assets, etc.). The purpose of the second tier is to help smaller business raise capital by providing easier access to an exchange listing. Two examples of alternative listing standards are the American Stock Exchange’s ECM market and the PSE’s business registration of offerings in virtually every state, and

Pacific Stock Exchange issues are granted a similar exemption in many states, these second tier companies would not be subject to blue sky registration. To address this, the American Stock Exchange has taken measures to prevent its Emerging Company Marketplace issuers from availing themselves of both the initial and secondary trading blue sky exemptions normally accorded Amex-listed companies. The Pacific Stock Exchange proposal also specifically states that issuers listed under SCOR are not entitled to blue sky exemptions. Nevertheless, questions have been raised about this issue and other issues arising out of the creation of a tier of substantially smaller and less mature issuers for stock exchange trading. Participants will discuss the benefits and problems involved in small business listing standards.

f. Additional Issues
The participants will also discuss other issues of mutual interest relating to the regulation of broker-dealers. Possible discussion topics include the following:

1. Broker-dealer books and records retention requirements, particularly electronic storage such as optical disc technology;
2. Supervisory responsibilities of broker-dealers with “franchised” branch offices or large numbers of “independent contractors;”
3. Sales practices of broker-dealers with respect to mutual funds, municipal securities and collateralized mortgage obligations;
4. Continuing assessment/education requirements for associated persons of broker-dealers;
5. Testing of mutual fund salesmen (Series 6); and
6. Issues relating to the disclosure of additional information relating to regulatory matters, litigation and arbitration (including settlements) involving associated persons of broker-dealers.

(3) Investment Management Issues

a. Investment Companies

(1) Report on investment company regulation by the Division of Investment Management. On May 1, 1982, the Division of Investment Management released its report on investment company regulation, Protecting Investors: A Half Century of Investment Company Regulation. The report proposed new legislation and the adoption or amendment of certain Commission rules governing the activities of investment companies registered under the Investment Company Act of 1940. The Commission has already acted upon a number of these recommendations. For example, the Commission has adopted a rule conditionally exempting structured financing from the Investment Company Act and has proposed a rule to create new procedures for the redemption or repurchase of fund shares. In the upcoming months, the Division expects the Commission to consider additional rule proposals and legislation consistent with the report’s recommendations. For example, the Commission expects Congress to consider legislation expanding the “private” investment company exception from registration under section 3(c)(1) of the Act. The conferees are expected to discuss these developments and how they may affect the regulation of investment companies and similar entities by the Commission and by the states.

(2) Investment company disclosure and filing requirements. Investment companies register with the Commission under the Investment Company Act, register their securities under the Securities Act of 1933, and comply with the proxy and reporting requirements under the Securities Exchange Act of 1934. Most investment companies also are required to register the shares they offer for sale in a state under that state’s securities law. While many states permit investment companies to satisfy their filing requirements by filing a copy of the registration statement filed with the Commission, states may require the filing of additional documents, or require that documents be filed at different times.

The Commission and the states have worked to coordinate, to the extent possible, the filing and disclosure requirements for investment companies. For example, in 1983 the Commission adopted a new two-part disclosure format for mutual funds under which all investors receive a shorter prospectus containing essential information about the fund and the risks investment in the fund present, while other more detailed information about the fund is available to investors requesting it in a Statement of Additional Information (“SAI”). When the new format was adopted, representatives of NASAA made substantial efforts to assure that the new format would also be viewed as meeting state disclosure requirements.

Conferees will discuss the status of federal and state efforts toward the goal of more uniform federal and state investment company disclosure.
requirements and filing procedures. Among other things, conferees will discuss:

(A) Two Part Format

State regulators have expressed certain concerns about whether important information about mutual fund investment is "drifting" from the prospectus to the SAI. State regulators are also concerned about perceived inconsistencies in the manner in which information is set forth and explained in the fee table in the prospectus. Conferees are expected to discuss these concerns, whether they have been non-compliance by some registrants with existing requirements for prospectus and fee table disclosure, and whether the Commission should review its rules governing the allocation of information between the prospectus and SAI and fee table presentation.

(B) State Disclosure Guidelines

State regulators are currently considering proposed guidelines for disclosure of investment companies' investments in high yield, or "junk" bonds and the risks associated with such investments. State regulators have also published for comment guidelines regarding investment companies' policy on share transactions initiated by instructions communicated over the telephone. The conferees are expected to discuss whether there is a need for, and the expected effect of, these guidelines and whether they would be consistent with the Commission's rules.

b. Investment Advisers

On January 26, 1993, the Investment Adviser Regulatory Enhancement and Disclosure Act of 1993 was introduced in the House of Representatives. The bill would amend the Investment Advisers Act of 1940 to require registered investment advisers to pay annual fees to fund the Commission's program for inspecting advisers. The bill would also codify the Commission "brochure" rule that requires advisers to furnish clients a written disclosure document, typically part II of Form ADV, the uniform registration for investment advisers used by the Commission and the states. The bill would impose additional requirements upon advisers, and would authorize the Commission to establish a "one-stop" filing system allowing advisers to make one filing that would be transmitted electronically to the Commission and the states. The conferees will discuss the status of the bill, as well as rule proposals that might result from the legislation, and the impact the legislation might have upon proposed joint Commission and state action such as revisions to Form ADV.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include Edgar, the Commission's pilot electronic disclosure system, the coordination of Commission rulemaking procedures with the states, training and educating staff examiners and analysts, and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other proposals which would enhance uniformity in the existing scheme of state and federal regulation, while helping to maintain high standards of investor protection.

Dated: March 31, 1993.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-7955 Filed 4-5-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32067; File No. SR-Amex-92-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Adoption of SICA Amendments to the Uniform Rules Which Govern the Administration of Securities Industry Arbitration

March 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared summaries, set forth in the places specified in Item IV below. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is proposing to amend its rules and procedures governing the administration of arbitration. These amendments codify modifications to the Uniform Code of Arbitration already approved by SICA.

New Rule 600(d) will provide that class actions shall not be eligible for submission to arbitration; however, an individual may plead the same facts in a pending or former class action if certification is denied to the class, or if the class is decertified, or if the individual is excluded from the class by the court or if the individual elects not to participate in the class. In that regard, Rule 427 governing pre-dispute arbitration clauses will, in conformity with the new class action rule, require that all new pre-dispute arbitration agreements with customers include a statement regarding the ineligibility of class actions for submission to arbitration.

It should be noted that in order to conform the Amex rules with the Uniform Code of Arbitration adopted by the Amex in 1980, proposed Rule 600 will also contain the language found in...
Article VIII of the Exchange’s Constitution which sets forth the duty of members to arbitrate disputes arising in connection with business conducted among themselves or with customers. Currently, Exchange Rule 621 does not specifically provide a mechanism for resolving pre-hearing matters in simplified proceedings, i.e., in those cases where the amount in dispute is less than $10,000. The Amex is proposing to amend this rule to codify the applicability of the discovery procedures to simplified arbitration. Currently, all awards must bear interest from the date of the award and must be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. Amended Rule 618 will require that interest accrue on awards from the date of the award only if the award is not paid within the required 30-day period or if a motion to vacate has been unsuccessful, or as specified by the arbitrators.

A number of other procedural changes are proposed:

- Rule 600(c) will allow the Exchange to refer claims arising out of transactions in a readily identifiable market to the forum for that market when the claimant so consents.
- Rule 602 will classify individuals who are registered under the Commodities Exchange Act or are members of a registered futures association or any commodities exchange as being from the securities industry for purposes of classification of arbitrators.
- Rule 602(f) will classify the time limitations applicable to any party wishing to exercise a peremptory challenge.
- Rule 608(d) will clarify the rule regarding failure of a party to appear at a hearing or continuation of any hearing.
- Rule 612 will clarify that arbitrators are empowered to take appropriate action, such as assessment of fees or costs, preclusion of documents or witnesses, and making disciplinary referrals in order to obtain compliance with any ruling by the arbitrators.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and protect investors and the public interest by improving the administration of an impartial forum for the resolution of disputes relating to the securities industry.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve the proposed rule change, or
(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written comments with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission’s Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-28 and should be submitted by April 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-7958 Filed 4-5-93; 8:45 am]

BILLING CODE 0510-97-M

Self-Regulatory Organizations: Filing of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Arbitration Fees

March 30, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), 15 U.S.C. 78ss(b)(1), notice is hereby given that on August 20, 1992, the Cincinnati Stock Exchange, Inc. (“CSE” or “Exchange”) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its arbitration rules to conform its arbitration fees to those charged by other self-regulatory organizations ("SROs").

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform the fee schedule in CSE’s arbitration rules with those adopted by other SROs in 1990. The proposed rule change is part of an updating process by which CSE seeks to keep its arbitration rule uniform with those of other SROs.

2. Statutory Basis

The proposed changes are consistent with section 6(b) of the Act, and in particular with section 6(b)(5) in that they provide for the equitable allocation of reasonable fees among persons using CSE’s facilities, and section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The proposed changes should have no adverse impact on competition.

C. Self-Regulatory Organization’s Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or
(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission’s Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-92-11 and should be submitted by April 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93-7957 Filed 4-5-93; 8:45 am]
BILLING CODE 8010-01-M


Self-Regulatory Organizations; Filing of Proposed Rule Change by International Securities Clearing Corporation Relating to a Data Transmission Link With Euroclear

March 31, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), notice is hereby given that on March 1, 1993, International Securities Clearing Corporation (“ISCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by ISCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule filing is to implement a data transmission link agreement with Euroclear.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) ISCC Rule 40 provides that ISCC may establish links with foreign financial institutions and may require members to enter into such agreements as ISCC deems necessary in order to use a link. Pursuant to the authority granted by ISCC Rule 40, ISCC has established a data transmission link with Euroclear Systems, a clearance and settlement system for internationally traded securities, located in Brussels, Belgium. All members who wish to access this link will be required to enter into a supplemental Member’s Agreement amendment (the “Amendment”). Access to the Euroclear link will be limited to those members who use a service bureau approved by ISCC. Automatic Data Processing, Inc. (“ADP”) is the first service bureau to be approved to process these transactions. Each member will be required to authorize ISCC to accept data from the service bureau on behalf of the member. Such authorization will be contained in the Amendment.

The link procedures provide that the service bureau will submit data to ISCC on the member’s behalf. ISCC will perform a limited edit function and, if the data passes the edit, will reformat the data into Euroclear formats and transmit the data to Euroclear. Euroclear will confirm receipt. Output from Euroclear will not flow through ISCC, but will go directly to the ISCC member from Euroclear.

ISCC members currently enter into a members agreement (“Members Agreement”) which, among other things, limits ISCC’s liability to the member for errors or omissions. Each broker/dealer that uses the services of ADP also enters into an agreement with ADP that limits ADP’s liability to the broker/dealer for errors or omissions. ISCC’s limitation of liability in the Members Agreement is not as broad as the one contained in ADP’s agreement. To protect ISCC from any gap between the two agreements, the Amendment will contain a provision that limits ISCC’s liability from errors or omissions on the part of ADP.
burden on competition.

Proposed Rule Change and Timing for

B. Self-Regulatory Organization’s

proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization’s

Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

ISCC has notified its members of the proposed changes to its procedures and to date has received no written comments. ISCC will notify the Commission of any written comments received by ISCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission’s Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-ISCC-93-1 and should be submitted by April 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 93-7795 Filed 4-5-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2636; Amend. #1]

Florida (and Contiguous Counties in Georgia); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, in accordance with amendments dated March 15, 20, 22, and 28, 1993, to include Baker, Broward, Collier, Dixie, Franklin, Gilchrist, Glades, Gulf, Lafayette, Leon, Monroe, Nassau, Sumter, Suwannee, and Wakulla Counties in the State of Florida as a disaster area as a result of damages caused by excessive rainfall, tornadoes, flooding, high tides and gale force winds. The incident type for this disaster is also hereby expanded to include damages resulting from cold temperatures and freezing conditions during the period of this disaster which has been established as beginning on March 12 and continuing through March 16, 1993.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bay, Calhoun, Caddo, and Liberty in the State of Florida and Walton, Camden, Grady, Thomas, and Ware Counties in the State of Georgia may be filed until the specified date at the aforementioned location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is May 12, 1993 and December 13, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)


Wayne S. Foren, Associate Administrator for Investment.

[FR Doc. 93-7793 Filed 4-5-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[BS-AP-No. s 3179 and 3209]

Burlington Northern Railroad Co.; Cancellation of Public Hearing

The Federal Railroad Administration (FRA) has cancelled the public hearing on the captioned signal petitions because petition BS-AP-No. 3209 has been withdrawn by the railroad and presently the FRA finds a public hearing unwarranted for petition BS-AP-No.
The hearing had been scheduled for April 22, 1993, in Aberdeen, South Dakota.

In the now-withdrawn application the Burlington Northern Railroad Company petitioned the FRA seeking approval of the proposed discontinuance and removal of the traffic control and automatic block signal system on the single main track, between Stateline, milepost 602.2 and Mobridge, South Dakota, milepost 805.1, on the Dakota Division, 12th Subdivision and between Mobridge, milepost 805.1 and Terry, Montana, milepost 1078.9, on the Montana Division, 27th Subdivision, a distance of approximately 477 miles. (See the original hearing notice in Federal Register, Vol. 58, No. 32, Friday, February 19, 1993, page 9233.)

The FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Issued in Washington, DC on March 31, 1993.
Grady C. Cothen, Jr.,
Associate Administrator for Safety.
[FR Doc. 93—7923 Filed 4—5—93; 8:45 am]
BILLING CODE 4810—06—M

DEPARTMENT OF THE TREASURY
Fiscal Service

Surety Companies Acceptable on Federal Bonds; United Surety and Indemnity Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29397 to reflect this addition:

United Surety and Indemnity Company. Business Address: P.O. Box 3432, Old San Juan Station, San Juan, PR 00902—3432. Underwriting Limitation*: $140,000. Surety Licenses*: PR, Incorporated in: Puerto Rico.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874—6602.

Charles F. Schwanz III,
Director, Funds Management Division,
Financial Management Service.
[FR Doc. 93—7899 Filed 4—5—93; 8:45 am]
BILLING CODE 4810—06—M

UNITED STATES INFORMATION AGENCY
Reporting and Information Collection Requirements Under OMB Review
AGENCY: United States Information Agency.
ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency under the terms and conditions of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87—256. USIA is requesting approval for a three-year extension to an information collection entitled "Artistic Ambassador Program Biographic Information Form for Auditioners", under OMB Control Number 3115—0172. Estimated burden hours per response is 1/2 hours. Respondents will be required to respond only one time.

DATES: Comments are due on or before May 6, 1993.

COPIES: Copies of the Request for Clearance (SF—63), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 519—8503; and OMB review: Mr. Jeffery Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone (202) 395—7340.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paperwork Reduction Project: OMB No. 3116—0172) is estimated to average 1/2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

TITLE: Artistic Ambassador Program Biographic Information Form for Auditioners.

FORM NUMBER: IAP—121.

ABSTRACT: This form is intended to obtain information from aspiring musicians who are interested in competing for the chance to represent the United States overseas. Candidates are screened, and through a process of elimination, finalists are selected. Overseas tours are from 4 to 6 weeks in duration, during which the successful candidates will give concerts for foreign audiences and represent the United States through personal contacts and the presentation of American art and culture. This program is intended to fulfill the requirements for the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87—256, imposed upon USIA to strengthen international cooperative relations through tours in foreign countries by creative performing artists.

PROPOSED FREQUENCY OF RESPONSES:
No. of Respondents—88
Recordkeeping Hours—0
Total Annual Burden—132

Dated: March 31, 1993.
Rose Royal,
Federal Register Liaison.
[FR Doc. 93—7890 Filed 4—5—93; 8:45 am]
BILLING CODE 8220—01—M
DEPARTMENT OF VETERANS AFFAIRS

Career Development Committee; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 that a meeting of the Career Development Committee will be held at the Omni Inner Georgetown Hotel, 2121 P Street NW., Washington, DC 20037, April 28 through April 30, 1993, starting at 8 a.m., April 28. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Department of Veterans Affairs. The committee advises the Director, Medical Research Service, on selection and appointment of Associate Investigators, Research Associates, and Clinical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8 a.m. to 9:30 a.m. on April 28, 1993, to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Dr. Rhoda Au, Executive Secretary of the Career Development Committee (12A3), Department of Veterans Affairs, Washington, DC 20420, (202) 523-6876, prior to April 21, 1993. The meeting will be closed from 8:30 a.m. to 5:30 p.m. on April 29, and 8 a.m. to 5:30 p.m. on April 30 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of Public Law 92-463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Rhoda Au, Ph.D., Acting Chief, Career Development Program, Medical Research Service (12A3), Department of Veterans Affairs, Washington, DC 20420 (phone 202-523-6876).


Heyward Bannister,
Committee Management Officer.
[FR Doc. 93-7948 Filed 4-5-93; 8:45 am]
Sunshine Act Meetings

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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
TIME AND DATE: 11:00 a.m., Monday, April 12, 1993.
PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW, Washington, DC 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.
CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.
Barbara R. Lowrey, Associate Secretary of the Board.
[FR Doc. 93-8152 Filed 4-2-93; 3:22 pm]
BILLING CODE 7500-01-M

NATIONAL TRANSPORTATION SAFETY BOARD
TIME AND DATE: 9:30 a.m., Tuesday, April 13, 1993.
STATUS: Open.
MATTERS TO BE CONSIDERED:
6035—Safety Study: Recreational Boating Safety.
NEWS MEDIA CONTACT: Telephone (202) 382-0660.
FOR FURTHER INFORMATION CONTACT: Bee Hardesty, (202) 382–6525
Bee Hardesty,
Federal Register Liaison Officer.
[FR Doc. 93–8113 Filed 4–2–93; 1:02 pm]
BILLING CODE 7530–01–M

NUCLEAR REGULATORY COMMISSION
DATE: Weeks of April 5, 12, 19, and 26, 1993.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public and Closed.
MATTERS TO BE CONSIDERED:
Week of April 5
Tuesday, April 6
10:00 a.m.
Briefing by AT on Unauthorized Forced Entry into the Protected Area at TMI-1 (Public Meeting)
(Contact: Sam Collins, 817-860-8183)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) Commission Vote on Authorization of Full Power License for Comanche Peak (Unit 2) (Tentative)
(i) Motion for Stay of Full Power License for Comanche Peak, Unit 2, and Petition to Intervene in Comanche Peak Proceedings (Contact: Charles Mullins, 301-504-1606)
(ii) Comanche Peak Unit 2 Full-Power Licensing (Contact: Suzanne Black, 301-504-1318)
Week of April 12—Tentative
Thursday, April 15
6:00 a.m.
Briefing on Review of SALP Process and Assessment of NRC Inspection Program (Public Meeting)
(Contact: Gary Zech, 301-504-1017)
3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.
To Verify the Status of Meeting Call (Recording)—(301) 504–1292.
CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.
William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.
[FR Doc. 93–8142 Filed 4–2–93; 3:31 pm]
BILLING CODE 7590–01–M

Federal Register
Vol. 58, No. 64
Tuesday, April 6, 1993
Part II

Department of Transportation

Coast Guard

33 CFR Part 20
Class II Civil Penalties; Interim Final Rule
The Coast Guard is issuing an interim final rule (IFR) addressing practice and procedure for cases assessing civil penalties under section 311(b) of the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90), and section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The Coast Guard is issuing the regulations to make available the enhanced enforcement capabilities provided by the OPA 90 amendments to the FWPCA. All class II penalties will be assessed following notice and opportunity to be heard in proceedings that meet the requirements of the Administrative Procedures Act (APA). In addition, with regard to the FWPCA, this rule provides for public notice of a class II civil penalty action and an opportunity for interested persons to comment on the proposed civil penalty, to present evidence at a hearing, and to seek a hearing if none is scheduled. To the extent discussed in the preamble, these rules apply to the assessment of class II civil penalties during the public comment period.

DATES: The interim final rule is effective on April 6, 1993. Comments must be received on or before June 7, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (C–LRA/3406) (CGD 92–228), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3408 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Pamela M. Pelcovits, OPA 90 Staff, U.S. Coast Guard Headquarters.
Federal Aviation Administration’s (FAA) civil penalty rules (14 CFR part 13), the Federal Maritime Commission’s (FMC) Rules of Procedure (46 CFR part 502), the Environmental Protection Agency’s (EPA) Consolidated Rules of Procedure, (40 CFR part 22), and the Coast Guard’s existing rules concerning suspension and revocation (46 CFR part 5). Also, the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Evidence were consulted, as well as numerous recommendations of the Administrative Conference of the United States (ACUS).

2. Administrative Law Judges

The regulations provide that an Administrative Law Judge (ALJ) will administer, hear, and decide class II civil penalty cases. In addition to this general statement of authority, the rules list specific authority, including the power: (1) To schedule and hold settlement conferences or other prehearing conferences for the simplification of issues; (2) to rule on prehearing motions or any other motions that may occur during the hearing; (3) to order discovery; and (4) to adjudicate the case and prepare a proposed order. The description of the duties of an ALJ in the regulations is based on section 556(c) of the APA and FAA’s rules (14 CFR 13.205). While Coast Guard ALJs are not provided specific authority to issue orders of contempt to sanction the conduct of attorneys during administrative hearings, they are not precluded from issuing orders that bar any person, including an attorney, from a specific proceeding for obstreperous or disruptive behavior. The ability of the ALJ to bar a person from a proceeding is based on the authority to adjudicate, which includes the power to protect a proceeding from disruption.

An ALJ may disqualify himself or herself upon becoming aware of any facts that might affect or seem to impair impartiality. A party (defined in the regulations as a respondent or Coast Guard) may make a motion to disqualify the judge on the ground of bias or any other reason. If an ALJ is disqualified, or is otherwise unable to perform, the Chief Administrative Law Judge (CALJ) will designate another ALJ to serve. If a motion to disqualify is denied, the decision may be appealed according to the procedures for appeals set forth in these regulations.

As provided in the APA, ex parte communications are forbidden. Further, an ALJ cannot be subject to the direction of a Coast Guard employee with duties related to enforcement, prosecution or investigation. Coast Guard employees whose duties are related to enforcement, prosecution or investigation are not to participate in or advise with regard to the rendering of an ALJ’s decision and order or an order on appeal, except as a witness or counsel.

3. Filing and commencement

Cases will be administered from the Office of the CALJ at Coast Guard Headquarters in Washington, D.C. A class II civil penalty case will be commenced by mailing or delivering the original complaint to the Hearing Docket Clerk in the Office of the CALJ. Both the duties of the Hearing Docket Clerk and the accepted forms of service are covered in the regulations. The issue of service is discussed next in this preamble. A copy of the complaint will be served upon the respondent by the Coast Guard. After the complaint is received, the CALJ assigns an ALJ to the case. This ALJ will be responsible for the day-to-day administration of the case through the filing of a decision and order.

If the respondent does not file an answer, or appear at a hearing, then a default judgment may be issued by the ALJ. The default rules are based on the default rules of the EPA (40 CFR 22.17).

4. Service

Service is the process of giving notice to the respondent that a case has been filed and delivering a copy of the complaint to the respondent. Service may be by either personal service or by mail.

The Coast Guard considered using only personal service. Personal service requires that the complaint be physically handed to the respondent or an agent with authority to accept service for the respondent. It may be made by a process server or by certified mail. Return receipt requested.

Service by regular mail is less costly than personal service and less time consuming. The Federal court system allows service of a summons by mail in both civil and criminal cases (Fed. R. Civ. Proc. 4(c)(2)(C)(ii); Fed. R. Crim. Proc. 4(d)(3)). This method has been very successful in the Federal court system and is described in these regulations.

Service may be made through first-class mail or personal delivery. Other methods of service, such as electronic or facsimile transmission, must be approved by the ALJ or the Hearing Docket Clerk. The documents must be filed with the Hearing Docket Clerk and the ALJ and served to the counsel or representative of record. If no such representative has been designated, the party must be served.

Discussion

1. General

These rules of practice and procedure apply to cases in which the Coast Guard seeks to assess class II civil penalties under the FWPCA (33 U.S.C. 1321(b)(6)) or class II civil penalties under CERCLA (42 U.S.C. 9609(b)). These statutes require that class II civil penalties are to be assessed only after notice and the opportunity to be heard pursuant to the APA, and the purpose of the regulations is to establish procedures that are consistent with the APA. Most importantly, they ensure that a respondent has all the rights afforded a party under the APA. The following discussion explains how the rules operate and, where important, why a particular provision was chosen among several alternative rules used by other Federal agencies and courts.

The Coast Guard used existing procedural rules as guides in developing these rules. Primary sources are the
Personal service is completed when the document is handed to the person to be served, delivered to his or her office during business hours, or delivered to his or her residence. For service by first-class mail or electronic means, service is complete upon deposit in the mail or electronic transmission.

The Coast Guard seeks comment on the service requirements of this rule. Most of the service rules have been based on FAA’s rules in 14 CFR 13.211 and the ACUS Draft Model Rules of Administrative Procedures (ACUS Model Rules).

5. Complaint and Answer

The rule refers to the charging document as the “complaint.” This term is used for similar documents filed in a Federal court civil action. The rules of the Environmental Protection Agency (EPA) also use the term “complaint” (40 CFR 22.14) for the document used to initiate a class II civil penalty proceeding.

Specificity in initial pleadings is desirable for both parties. Specific allegations in a complaint and specific responses in an answer eliminate uncontested issues, narrow and focus any contested issues between the parties, and place contested issues squarely before the ALJ.

Under this rule, the complaint will include a description of the acts or omissions of the person that constitute the basis for assessing the class II civil penalty, will identify the statute or regulation allegedly violated, and will set out the proposed amount of the civil penalty sought. This provision is based on FAA’s rules (14 CFR 13.208) and EPA’s rules (40 CFR 22.14). The Coast Guard believes that this is the information needed to give a respondent “meaningful notice” of the charges so that a defense can be prepared. A general denial of a complaint is considered a failure to file an answer. A respondent is required to address each numbered paragraph in the complaint. If a respondent disagrees with all allegations in a paragraph, the respondent may deny the entire paragraph. Allegations in a separately-numbered paragraph that are not specifically denied are deemed to be admitted as stated.

A failure to file an answer at all without good cause will be considered an admission of the truth of each allegation and subject the respondent to a default order.

The Coast Guard is required to suggest in the complaint a location for any hearing. If the respondent does not agree with the proposed location, the respondent is required to suggest a different location for the hearing in the answer if necessary. However, the ALJ will set the location for the hearing. In doing so, the ALJ will give “due regard” to the convenience of the parties and consider factors such as where the majority of the witnesses reside or work, and where the incident occurred.

6. Representation

A respondent may be represented by himself or herself, an attorney, or any other authorized representative, provided that the designated representative files a notice of appearance. The provisions of the regulations on representation comply with the statutory requirements of the APA and the Agency Practice Act (5 U.S.C. 500) and are based on the FMC’s rules (46 CFR 502.21, 502.26 and 502.27) and the ACUS Model Rule.

7. Pleadings

The ALJ will serve on each party and interested person copies of the notices of hearings. Further, the ALJ will serve on each party notices, rulings, orders, and similar documents issued by the ALJ. Any person filing a document with the ALJ must serve a copy of the document on each party, accompanied by a certificate of service.

8. Participation by Interested Persons and Public Notice

The FWPCA states that when the Coast Guard seeks to assess a class II civil penalty, the public must be given notice and an opportunity to comment on the proposed assessment. These rules provide for public notice in the Federal Register and subsequent participation, as set out in the OPA amendments to the FWPCA, by persons who identify themselves as “interested persons.” These rules are based on EPA’s rules concerning participation of interested persons in similar class II civil penalties under 40 CFR 22.38. Since procedures for assessing class II penalties under section 109 of CERCLA do not cover interested persons, these procedures do not apply in cases brought under CERCLA.

Any person wishing to participate in a proceeding as an interested person must file a written notice of intent to comment with the Hearing Docket Clerk within 30 days after the public notice is published in the Federal Register. A copy of any comments filed will be served upon each party in accordance with the provisions for filing and service. An ALJ may accept late comments at the ALJ’s discretion.

An interested person will be notified by the Hearing Docket Clerk of any hearing held in the case and of the ALJ’s decision and order. Interested persons are not parties to class II civil penalty proceedings.

In a hearing, the interested persons shall have a reasonable opportunity to be heard and to present evidence. This means they may present briefs and introduce oral or documentary evidence. The ALJ may limit evidence introduced by interested persons in the same manner as with parties. Irrelevant, immaterial or cumulative evidence may be excluded. Parties may move to block admission of evidence by interested parties on those grounds.

An ALJ may provide notice to interested persons to attend prehearing conferences. If an interested person attends a prehearing conference, the interested person will be asked to provide witness lists and copies of exhibits to the ALJ and the parties. The APA limits certain procedural rights—e.g., the right to cross-examination and the right to request subpoenas to compel the attendance of witnesses or to produce evidence at a hearing, to parties. Accordingly, the Coast Guard, as does the EPA, will not permit interested persons to cross-examine witnesses or to request subpoenas. Given the statutory limitation of the participation of interested persons to the reasonable opportunity to be heard and to present evidence, the Coast Guard believes that granting interested persons these rights would unnecessarily delay the proceedings, create undue burdens or expense on the parties, and needlessly complicate the issues in the case. For similar reasons, interested persons are not permitted to attend settlement conferences. Interested persons will receive notice of any settlement agreement and consent order and will have the right to request a hearing, as more fully discussed later in this section.

A copy of the decision and order will be served upon each interested person. If the ALJ’s decision and order is appealed, the decision of the Commandant on appeal will be served on each interested person.

If the ALJ decides the case without a hearing (e.g., the respondent admits the violations and does not dispute the proposed penalty; or the case is decided by a summary decision, or a settlement agreement and consent order, or a motion to dismiss or a default order), the OPA amendments to the FWPCA provide an interested person the opportunity to petition the Commandant to set aside the ALJ’s decision and order and to provide a hearing. Such a petition must be filed within 30 days after the issuance of the decision and order.

If the evidence presented by the interested person in support of the
petition is considered material and was not considered in the issuance of the ALJ's decision and order, the Commandant will set aside the ALJ's order and will direct the ALJ to provide a hearing. Whenever a hearing is denied, the Commandant will provide the petitioner notice of the denial and the reasons for the denial. A notice setting forth the reasons for denial also will be published in the Federal Register. The Coast Guard seeks public comment on this implementation of the notice and comment requirements set out in the OPA 90 amendments to the FWPCA.

9. Intervention

The rules of several agencies permit non-parties to join civil penalty proceedings as intervenors. These agencies include EPA (40 CFR 20.11), FAA (14 CFR 13.206) and DOT (14 CFR 302.15). Intervention can be given as a matter of right or at the discretion of the ALJ.

The Coast Guard is not providing provisions to permit intervention because the statutory requirements expressly sets out limited participation by interested persons and because the Coast Guard has not identified any reasons to provide additional participation in class II civil penalty proceedings at this time. Further, the Coast Guard is concerned that motions to intervene and actual intervention by persons with interests less directly affected than those of the respondents could delay the proceedings and compliance the issues in a case. The IFR does not provide for intervention. However, the Coast Guard is interested in comments on the appropriateness of intervention in class II civil penalty proceedings. The Coast Guard may change the regulations if it decides that permitting intervention is warranted. It is the Coast Guard's expectation that any subsequent intervention rules would permit intervention only if the ALJ found that intervention would not unduly broaden the issues or delay the proceedings. Further, the ALJ would grant a motion to intervene only if the intervenor would be bound by any order or decision entered in the case and the intervenor has a property, financial, or other legitimate interest that may not be addressed adequately by the parties.

If the Coast Guard were to permit intervention, the Coast Guard envisions that the ALJ would determine the extent of an intervenor's participation in a class II civil penalty proceeding depending on the intervenor's interest and ability to improve the proceeding. The ALJ's order granting intervention would set out filing and service requirements for intervenors, any discovery rights, and the degree of participation in a hearing. Public comment on this issue is requested.

10. Discovery

Discovery is the process by which the parties are allowed to learn relevant facts about the case known to the other parties. There are three categories of discovery addressed in the rules: (1) interrogatories (written questions that must be answered under oath) to the parties; (2) depositions (sworn testimony of the parties or other persons who have knowledge of facts relevant to the case before a hearing); and (3) requests for inspection and copying of documents and requests for production of tangible evidence or inspection of immovable tangible evidence.

The reasons that courts and administrative agencies allow discovery include the following: (1) Reducing surprise at trial, which may give an unfair advantage to a party; (2) ensuring that all the facts relevant to the case are placed before the tribunal; and (3) promoting settlements by giving both parties a sound basis to evaluate their cases before trial. On the other hand, discovery procedures may potentially be misused if not focused on the limited issues to be addressed at the class II penalty proceeding. The OPA 90 amendments to the FWPCA state that rules for discovery for class II civil penalty proceedings may be issued. The Coast Guard considered several alternatives in the area of discovery. Some agencies, such as the EPA, have minimal specific discovery rules, and discovery is at the discretion of the ALJ (40 CFR 22.19(f)). The National Transportation Safety Board (NTSB) also has non-specific discovery rules under the control of the ALJ, but uses the FRCP as guidelines. FMC and FAA have extensive discovery rules that are similar to the discovery permitted under the FRCP, although tailored to accommodate the less formal requirements of administrative practice.

The Coast Guard is establishing limited discovery rules that authorize the ALJs to order discovery as appropriate. These rules use the FRCP as a basis for the regulations that set out procedures for any discovery that may be allowed by the ALJ. The Coast Guard seeks public comment on the use of discovery and the discovery procedures.

11. Conferences and Settlement

In Executive Order 12778 (56 FR 55195, October 25, 1991), the President directed that an agency that adjudicates administrative claims shall, to the extent practical and consistent with applicable law, implement ACUS Recommendation 86-7 entitled "Case Management as a Tool for Improving Agency Adjudication" (1 CFR 305.86-7). The Attorney General of the United States has stated that this applies to agencies that have hearings before ALJs (Memorandum of Preliminary Guidance on Implementation of the Litigation Reforms of Executive Order 12778; 57 FR 3540, January 30, 1992). ACUS Recommendation 86-7 provides that presiding agency officers attempt to promote party agreement on both procedural and substantive issues in order to reduce hearing time and, if appropriate, avoid hearings altogether. To achieve these purposes, the rules provide that the presiding ALJ may require a prehearing conference. At the conference, the parties or their representatives may discuss how to expedite a hearing on the merits of the case by the following methods: (1) Obtaining admissions of fact; (2) agreeing to stipulations regarding the authenticity of documents; (3) reducing cumulative evidence; (4) identifying witnesses; (5) exchanging documents each party intends to introduce into evidence; (6) obtaining rulings on any pending motions; and (7) taking any other action appropriate to the case. The rules are based on 5 U.S.C. 556(c)(6)-(8), EPA's rules (40 CFR 22.19(a)) and FMC's rules (46 CFR 502.94).

Conferences may also be held for settlement of the case. Any proposed settlement will be in the form of a settlement agreement, a consent order and a motion for its entry. This rule is based on ACUS recommendations and EPA's rules (40 CFR 22.18). Only parties may discuss possible settlement of the case. Alternate dispute resolution may be authorized by the ALJ with the consent of all of the parties. The Coast Guard seeks public comment on the use of settlement and prehearing conferences.

12. Standard of Proof

In Steadman v. Securities and Exchange Commission, 450 U.S. 91, 101 S. Ct. 999, 67 L. Ed. 2d 69 (1981), the Supreme Court determined that in administrative hearings the standard of proof required for purposes of due process is "preponderance of the evidence." For this reason, the rules provide that the standard of proof in class II civil penalty cases is "preponderance of the evidence."

13. Rules of Evidence

The rules follow the requirements of the APA and provide that a party is entitled to present oral or documentary evidence and rebuttal evidence. Parties
may also conduct cross-examination, as may be required for a full and true disclosure of the facts. The Coast Guard has based most of these rules on FAA's rules (14 CFR 13.222-13.229) and FMC's rules (46 CFR 502.150-157 and 502.152).

The ALJ may admit any relevant oral or documentary evidence, unless it is privileged. However, the ALJ may exclude evidence if it is unfairly prejudicial, confusing, would cause delay, or is needlessly cumulative. Hearsay evidence is admissible in administrative adjudications under the APA. The fact that it is hearsay may lower the weight given to the evidence but does not affect its admissibility. If there is an objection to evidence, the party making the objection must give the legal grounds for the objection. If evidence is excluded, then the party whose evidence is excluded may have an offer of proof included in the record. The ALJ has the power to exclude proprietary information pertaining to business matters such as trade secrets and other confidential or sensitive material. A non-proprietary summary or extract may be required in lieu of the original evidence. If the proprietary matter must be part of the record in order to avoid prejudice to a party, then the ALJ may arrange for a party to have access to the proprietary information with safeguards for confidentiality.

The ALJ may accept a fact as proven without requiring formal proof (official notice). In particular, the ALJ may take official notice of facts that are within the specialized knowledge of the Coast Guard.

If a person is available for cross-examination, then a sworn written statement by the person may be entered into the record instead of direct testimony. This requirement is consistent with the Supreme Court's decision in Richardson v. Perales, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed.2d 842 (1971), and is based on the ACUS Draft Rules, the Commodity Futures Trading Commission's (CFTC) rules (17 CFR 1.31.218(f)(5)).

15. Decision, Record, and Hearing

The rules provide that the ALJ's decision must contain the reasons and basis of findings and conclusions. The decision also must contain an appropriate order, a notice of a right to appeal, and the date upon which the order will be effective. The official record of each case will be maintained in the Office of the CALJ. The official record will include a transcript of any hearing, exhibits received into evidence, and other documents submitted in the case.


The decision by an ALJ, if not appealed, constitutes the final order in the case. If there is no appeal, any interested person may request a hearing at this time if none has been held. Upon appeal, unless the Commandant remarshes the case for further proceedings, the Commandant's order is the final order in the case and any interested person may submit a petition for hearing, if none was held, at that time.

17. Appeals

The IFR provides for appeals on any question of law or finding of fact. The Commandant may review the transcript and exhibits in order to determine whether the ALJ committed prejudicial or gross error. The rules for appeals are based on the Coast Guard's current rules for appeal (46 CFR part 5, subpart J) and FAA's civil penalty appeal rules (14 CFR 13.233).

An appeal brief must set forth in detail the specific objection to the decision, the basis for the appeal, the reasons supporting the appeal, and the relief requested. Any party may file a reply brief, and the Commandant may allow any person to file an amicus brief.

Regulatory Evaluation

This rulemaking 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). Because the Coast Guard finds that these procedural rules will not have a direct economic impact, no Regulatory Evaluation is necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rulemaking 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). Because it expects the impact of the rulemaking to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

If, however, you think that your business qualifies as a small entity and that this rulemaking will have a significant economic impact on your business, please submit a comment (see “ADDRESSES”) explaining why you think your business qualifies and in what way and to what degree this rulemaking will economically affect your business.

Collection of Information

This rulemaking contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rulemaking and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. Procedural rules do not require environmental impact studies. The Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under “ADDRESSES.”

List of Subjects in 33 CFR Part 20

Administrative practice and procedure, Authority delegations (Government agencies), Penalties, Water pollution control, Waterways.
For the reasons set forth in the preamble, 33 CFR part 20 is added as follows:

**PART 20—CLASS II CIVIL PENALTIES**

**Subpart A—General**

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20.101 Definitions.
20.102 Scope.
20.103 Construction and waiver of rules.

**Subpart B—Administrative Law Judges**

20.201 Assignment.
20.203 Unavailability.
20.204 Withdrawal or disqualification.
20.205 Ex parte communications.
20.206 Separation of functions.
20.207 Qualifications.
20.208 Office.
20.209 Hearings.
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20.211 Settlement.

**Subpart C—Pleadings and Motions**

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20.302 Filing of documents and other materials.
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**Subpart D—Proceedings**

20.401 Initiation of class II civil penalty proceedings.
20.402 Public notice.
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20.404 Interested persons.

**Subpart E—Conferences and Settlement**

20.501 Prehearing and other conferences.
20.502 Settlement.
20.503 Alternative dispute resolution.

**Subpart F—Discovery**

20.601 General.
20.602 Additional response.
20.603 Interrogatories.
20.604 Requests for production of documents or things for inspection or other purposes.
20.605 Depositions.
20.606 Protective order.
20.607 Sanctions for failure to comply.
20.608 Subpoenas.
20.609 Motion to quash or modify.

**Subpart G—Hearings**

20.701 Standard of proof.
20.702 Burden of proof.
20.703 Presumptions.
20.704 Scheduling and notice of hearing.
20.705 Failure of party to appear.
20.706 Witnesses.
20.707 Telephone testimony.
20.708 Witness fees.
20.709 Closing of the record.
20.710 Proposed findings, closing arguments, and briefs.

**Subpart H—Evidence**

20.801 General.
20.802 Admissibility of evidence.
20.803 Hearing evidence.
20.804 Objections and offers of proof.
20.805 Proprietary information.
20.806 Official notice.
20.807 Exhibits and documents.
20.808 Written testimony.
20.809 Stipulations.

**Subpart I—Decisions and Orders**

20.901 Summary decision.
20.902 Decision of the administrative law judge.
20.903 Record of proceedings.
20.904 Petitions to set aside an order and provide a hearing.
20.905 Reopening.

**Subpart J—Appeals**

20.1001 General.
20.1002 Record on appeal.
20.1003 Procedures for appeal.
20.1004 Civil penalty appeal decisions.
20.1005 Availability of decisions.
20.1006 Record on appeal.
20.1007 Finality of order.

**PART 20—CLASS II CIVIL PENALTIES**

20.1008 Record of proceedings.
20.1009 Reopening.

**Subpart K—Finality and Availability of Orders**

20.1101 Finality of order.
20.1102 Availability of decisions and orders.


**Subpart A—General**

§ 20.101 Scope.

(a) Except as specifically noted, these rules of practice and procedure apply to the following civil penalty proceedings before the United States Coast Guard:

(1) Class II civil penalties assessed under section 311(b) of the Federal Water Pollution Control Act, (33 U.S.C. 1321; 42 U.S.C. 9609(b)).

(2) Class II civil penalties assessed under section 109 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9609(b)), except that § 20.404 and any other provision for interested persons do not apply to penalties assessed under 42 U.S.C. 9609(b).

(b) In the absence of a specific provision, procedure will be consistent with the Federal Rules of Civil Procedure (28 U.S.C. Appendix).

§ 20.102 Definitions.

(a) Administrative Law Judge means any person designated by the Commandant under the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 33 U.S.C. 1321(b)(6) and 42 U.S.C. 9609(b).

(b) Chief Administrative Law Judge means the Administrative Law Judge appointed as the Chief Administrative Law Judge of the U.S. Coast Guard by the Commandant.

(c) Civil penalty proceeding means a trial-type proceeding for the assessment of a civil penalty that offers an opportunity for an oral, fact-finding hearing before an Administrative Law Judge.

(d) Coast Guard Representative means a Coast Guard official who has been designated to prosecute a class II civil penalty.

(e) Commandant means the Commandant of the U.S. Coast Guard.

(f) Complaint means a document issued by a Coast Guard Representative alleging a violation of the Federal Water Pollution Control Act, as amended, or a rule, regulation, or order issued under that Act; or a violation of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or a rule, regulation, or order issued under that Act.

(g) Hearing Docket Clerk means an employee of the Office of the Chief Administrative Law Judge who is responsible for receiving documents, determining their completeness and legibility, and distributing them to the Administrative Law Judge and others, as required by this part.

(h) Interested person means a person who, as provided in § 20.404, comments on a proposed class II civil penalty assessment or files in writing a notice of intent to present evidence in any hearing held on the proposed class II civil penalty assessment.

(i) Mail includes U.S. first-class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

(j) Motion means a request for an order or ruling from an Administrative Law Judge.

(k) Party means a respondent or the Coast Guard.

(l) Person includes an individual, partnership, corporation, association, public or private organization, or a government agency.

(m) Personal delivery includes hand-delivery or use of a contract or express courier service. “Personal delivery” does not include the use of government interoffice mail service.

(n) Pleading means a complaint, an answer, and any amendment of these documents permitted under this part.

(o) Respondent means a person charged with a violation in a complaint issued under this part.

§ 20.103 Construction and waiver of rules in this part.

(a) The rules in this part will be construed to secure a just, speedy, and inexpensive determination in every class II civil penalty proceeding.
rules in this part to prevent undue hardship or manifest injustice, or if the Commandant, the Chief Administrative Judges

Subpart B—Administrative Law Judges

§20.201 Assignment.
An Administrative Law Judge, assigned by the Chief Administrative Law Judge following receipt of the complaint, shall preside over each class II civil penalty proceeding.

The Administrative Law Judge shall have all powers necessary to the conduct of fair, expeditious, and impartial hearings, including the power to—

(a) Administer oaths and affirmations;
(b) Issue subpoenas authorized by law;
(c) Rule on motions;
(d) Order discovery as provided in this part;
(e) Hold hearing or settlement conferences;
(f) Rule on the course of hearings;
(g) Call and question witnesses;
(h) Issue an order and decision;
(i) Exclude any person from a hearing or conference for disrespect, disorderly or rebellious conduct; and
(j) Take any other action consistent with law and Coast Guard policy authorized by the Chief Administrative Law Judge.

§20.203 Unavailability.
In the event that an Administrative Law judge is unable to perform the duties described in §20.202 or otherwise becomes unavailable, the Chief Administrative Law Judge shall designate a successor.

If a hearing has been commenced and an Administrative Law Judge is unable to proceed, a successor Administrative Law Judge may proceed with a hearing in a case. The successor Administrative Law Judge may, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor Administrative Law Judge may, within his or her discretion, recall any other witness.

§20.204 Withdrawal or disqualification.
(a) An Administrative Law Judge may at any time disqualify himself or herself.
(b) Prior to the filing of the Administrative Law Judge's decision, any party may move that the Administrative Law Judge disqualify himself or herself on the ground of personal bias or for any other reason. Promptly upon discovery of the alleged facts, a party shall file with the Administrative Law Judge an affidavit constituting grounds for a motion to disqualify.

(1) The Administrative Law Judge shall rule upon the motion, stating the grounds for her or his ruling. If the Administrative Law Judge concludes that the motion is timely and has merit, the Administrative Law Judge shall disqualify herself or himself and withdraw from the case.

(2) An Administrative Law Judge's denial of a motion for disqualification may be appealed to the Commandant according to the procedures in this part.

(3) The Administrative Law Judge shall proceed with the adjudication, or if the hearing has been concluded, he or she shall proceed with the issuance of a decision and order.

§20.205 Ex parte communications.
Ex parte communications are governed by section 557(d) of the Administrative Procedures Act (5 U.S.C. 557(d)).

§20.206 Separation of functions.
(a) An Administrative Law Judge may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigatory or prosecuting functions for the Coast Guard.

(b) No officer, employee or agent of the Coast Guard engaged in the performance of investigatory or prosecutorial functions in connection with an order or appeal shall withdraw from the case or advise in the decision of the Administrative Law Judge or the Commandant on appeal, except as a witness or counsel in the adjudication or appellate review.

Subpart C—Pleadings and Motions

§20.301 Representation.
(a) A party may appear either without counsel or other representatives, by an attorney, or by other duly authorized representative. An attorney or other duly authorized representative shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;
(2) The person on whose behalf the appearance is made; and
(3) The person's mailing addresses and telephone numbers.

(b) Notice, including the items listed in paragraph (a) of this section, must also be given for any withdrawal of appearance.

(c) An attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal representation of membership is sufficient proof, unless otherwise ordered by the Administrative Law Judge.

(d) Any person who is not an attorney shall file a statement setting forth the basis of his or her authority to act as a duly authorized representative. The administrative law judge may deny appearance as a representative to any person who the Administrative Law Judge finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper personal conduct.

§20.302 Filing of documents and other material.
(a) All documents and material relating to a class II civil penalty proceeding, must be filed at the following address: Chief Administrative Law Judge, Commandant (CG-J), U.S. Coast Guard, 2100 Second St., SW., Washington, D.C. 20593-0001.

(b) An executed original and one copy of each document (including exhibits and supporting affidavits) must be filed with the Hearing Docket Clerk. One additional copy of each filed document must be filed with the assigned Administrative Law Judge. Copies need not be signed, but the name of the person signing the original must be shown on each copy.

(c) In the absence of the assignment of a case to an Administrative Law Judge, the Administrative Law Judge's copy will be filed with the Chief Administrative Law Judge.

(d) Filing may be made by first-class mail or personal delivery. Other methods, such as facsimile transmission or other electronic means, may be permitted at the discretion of the Hearing Docket Clerk or the Administrative Law Judge.
(e) When the Hearing Docket Clerk determines that a document, or other material, offered for filing does not comply with requirements of this part, the Hearing Docket Clerk may decline to accept the document or other material for filing and return it unfiled or may accept it and advise the person offering it of the deficiency and require the deficiency to be corrected.

§ 20.303 Form and content of filed documents.
(a) A filed document must identify clearly—
(1) The title of the proceeding;
(2) The docket number of the case if one has been assigned;
(3) A designation of the type of filing (e.g., petition, notice, motion to dismiss, etc.);
(4) The name and designation of the filing party; and
(5) The filer's address, telephone number, and facsimile transmission number (if any) and, if represented, the name, address, telephone number, and facsimile transmission number (if any) of the filer's representative.
(b) All filed documents must be—
(1) Printed on one side of the page and double-spaced except for footnotes and long quotations, which may be single-spaced;
(2) Bound on the left side, if bound.
(c) All documents must be in the English language or, if in a foreign language, accompanied by a certified translation.
(d) Service may be made by first-class mail or personal delivery. Other methods of service, such as facsimile transmission or other electronic means, may be used, other than for service of the complaint and answer, at the discretion of the Administrative Law Judge. The Hearing Docket Clerk may place limitations on the times of and circumstances for service by facsimile transmission or other electronic means.
(e) Unless otherwise ordered by the Administrative Law Judge, all documents filed in accordance with § 20.302 must be served upon counsel and representatives, or if not represented, the persons themselves. Service upon counsel or representative will constitute service upon the person to be served.
(f) Service must be made at the address of the counsel or representative, or, if not represented, at the last known address of the residence or principal place of business of the person to be served.
(g) If service is made by personal delivery, delivery is complete when the document is handed to the person to be served or delivered to the person's office during business hours or, if the person to be served has no office, is delivered to the person's residence and deposited in a conspicuous location. If service is by first-class mail, facsimile transmission, or other electronic means, service is complete upon deposit in the mail or electronic transmission.

§ 20.304 Service of documents.
(a) A copy of each document issued by the Administrative Law Judge in the proceeding is served upon each party.

The Administrative Law Judge shall serve a copy of notices of hearings upon each interested person, as determined under § 20.404.
(b) Unless otherwise ordered by the Administrative Law Judge, one copy of all documents filed with the Hearing Docket Clerk must be served upon each party by the persons filing them.
(c) Every document filed with the Hearing Docket Clerk and required to be served upon all parties must be accompanied by a certificate of service signed by or on behalf of the party or person making the service, stating that service has been made. Certificates of service should be in substantially the following form:

I hereby certify that I have this day served the foregoing document(s) upon the following parties (or designated representatives) in this proceeding at the address indicated by (specify the method):
(1) [Name/address]
(2) [Name/address]

Dated at __________, this day of __________, 19_____

(Signature)

For

Capacity________.

§ 20.305 Amendment or supplementation of filed documents.
(a) A person shall amend or supplement a previously filed pleading or document if the person learns of a material change that may affect the outcome of the class civil penalty proceeding. However, no amendment will be allowed that would broaden the issues, without an opportunity for the parties to reply to the amendment and to allow preparation for the broadened issues.
(b) The Administrative Law Judge may approve other amendments or supplements to filed documents.
(c) Parties shall notify the Hearing Docket Clerk, Administrative Law Judge, and all other parties and their representatives of any change of address.

§ 20.306 Computation of time.
(a) In computing any period of time prescribed in this part, the day on which the designated period begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the period of time prescribed is 7 days or less, intermediate Saturdays, Sundays, and Federal holidays are excluded in the computation.
(b) If service or filing is by domestic mail, 3 days will be added to the designated period for response.
(c) If service or filing is by mail to a foreign country, 14 days will be added to the designated period for response.
(d) An Administrative Law Judge, for cause shown, may at any time in his or her discretion—
(1) With or without motion or notice, order a time period extended if request for extension is made before the end of the original time period, or as extended by a previous order; or
(2) Upon motion made after the expiration of the time period, permit the act to be done where the failure to act was excusable.

§ 20.307 Complaint.
(a) The complaint must set forth—
(1) The statute or regulation allegedly violated.
(2) The pertinent facts involved; and
(3) The amount of the requested class II civil penalty.
(b) The Coast Guard Representative should request the place of hearing when filing the complaint.

§ 20.306 Answer.
(a) The respondent shall file a written answer to the complaint not later than 20 days after service of the complaint. The answer must conform with the filing and service requirements of this subpart.
(b) The person filing an answer shall indicate whether he or she agrees with the place of hearing proposed in the complaint, and if necessary, shall request another location for the hearing when filing the answer.
(c) An answer must state whether or not the respondent intends to contest any of the violations set forth in the complaint. The answer must include any affirmative defense that the respondent intends to assert at the hearing.
(1) The answer must admit or deny each numbered paragraph of the complaint. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the complaint that is not specifically denied in the answer is deemed admitted.
(2) A general denial of the complaint is deemed a failure to file an answer.
(d) A respondent’s failure to file an answer without good cause will be deemed an admission of the truth of each allegation contained in the complaint.

§ 20.309 Motions.
(a) A person applying for an order or ruling not specifically provided in this subpart shall do so by motion. All written motions must comply with the form, filing and service requirements of this subpart. All motions must state clearly and concisely—
(1) The purpose of and the relief sought by the motion;
(2) The statutory or regulatory authority relied upon; and
(3) The facts alleged to constitute the grounds requiring the relief requested.
(b) A proposed order may be attached to a motion.
(c) Motions must be in writing, except that a motion made at a hearing will be sufficient if stated orally upon the record, unless the Administrative Law Judge directs that it be reduced to writing.
(d) Except as otherwise provided in this part, a party must file any response to a motion within 10 days of receipt of service of a written motion. When a motion is made during a hearing, an oral response may be made at the hearing or in writing, within a reasonable time, as determined by the Administrative Law Judge.
(e) Unless otherwise ordered by the Administrative Law Judge, the filing of a motion does not stay a proceeding.
(f) Rulings will be made on the record either orally or in writing. The Administrative Law Judge may summarily deny dilatory, repetitive, or frivolous motions.

§ 20.310 Default by respondent.
(a) A respondent may be found to be in default upon failure to file a timely answer to the complaint, failure to comply with a prehearing or hearing order, or, after motion, upon failure to appear at a conference or hearing without good cause being shown.
(b) Any motion for a default order must conform to the rules of form, service, and filing of this subpart and must include a proposed default order. The respondent alleged to be in default has 20 days from service to reply to the motion.
(c) Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent’s right to a hearing on such factual allegations. The penalty proposed in the complaint will be assessed and will become due and payable by respondent without further proceedings 30 days after a final order is issued.
(d) Upon finding that a default has occurred, the Administrative Law Judge shall issue a default order against the defaulting party. This order will constitute the Administrative Law Judge’s decision, and will be filed with the Hearing Docket Clerk.
(e) A default order must include findings of fact showing the grounds for the judgment, conclusions regarding all material issues of law or fact, and the penalty or sanction which is assessed, as appropriate.
(f) For good cause shown, the Administrative Law Judge may set aside a default order.

§ 20.311 Withdrawal or dismissal.
(a) A class II civil penalty proceeding may be withdrawn without an order of the Administrative Law Judge in the following manner:
(1) By the filing of a stipulation by all parties who have appeared in the class II civil penalty proceeding;
(2) By the filing of a notice of withdrawal by the Coast Guard Representative at any time before the respondent has served a responsive pleading; or
(3) By the filing of a notice of withdrawal by the Coast Guard representative at any time after the respondent has served a responsive pleading, together with a certification by the representative that the withdrawal is made in good faith. After the serving of respondent’s pleading the Coast Guard may file only one notice of withdrawal in any proceedings arising from the same facts.
(b) Unless otherwise stated in the stipulation or notice of withdrawal, a withdrawal under paragraph (a) of this section is without prejudice.
(c) Except as provided in this section, a class II civil penalty proceeding may not be withdrawn except by order of an Administrative Law Judge upon such terms and conditions as the Administrative Law Judge deems proper.
(d) Any party may move to dismiss the complaint, including a request for relief for—
(1) Failure of another party to comply with the requirements of this part or with any order of the Administrative Law Judge;
(2) Failure to prosecute the civil penalty proceeding; or
(3) Failure to show a right to relief based upon the facts or law.
(e) Unless the Administrative Law Judge specifies otherwise, a dismissal under this section, other than a dismissal for lack of jurisdiction, constitutes a hearing upon the merits, and is the initial decision and order of the Administrative Law Judge.

Subpart D—Proceedings

§ 20.401 Initiation of class II civil penalty proceedings.
A class II civil penalty proceeding is initiated when the complaint is filed with the Hearing Docket Clerk.

§ 20.402 Public notice.
Upon the filing of a complaint under section 311 of the Federal Water Pollution Control Act, as amended, the Commandant or his or her representative shall provide notice and 30 days public comment on the proposed issuance of an order assessing a class II civil penalty which is responsive to the complaint. The notice is published in the Federal Register.

§ 20.403 Consolidation or severance of class II civil penalty proceedings.
(a) An Administrative Law Judge may, for good cause, with the approval of the Chief Administrative Law Judge and with notice and opportunity to object provided to all parties, consolidate any or all matters at issue in two or more class II civil penalty proceedings.
docketed under this part. Good cause includes cases where there are common parties or questions of fact and where such consolidation would expedite the cases, and the interests of justice would be served. Consolidation will not be granted if it will prejudice any rights available under this part or if it will affect the right of any party to raise issues that could have been raised if consolidation had not occurred.

(b) Unless directed otherwise by the Chief Administrative Law Judge, the presiding Administrative Law Judge may by motion or on his or her own motion, for good cause shown, order any case if civil penalty proceeding severed with respect to some or all parties, claims, and issues.

§20.404 Interested persons.

(a) A person not a party to a class II civil penalty proceeding under this part, who wishes to be an interested person in the proceeding, must file with the Hearing Docket Clerk within 30 days after publication in the Federal Register of the public notice required by §20.402 either—

(1) Written comments on the proceeding; or

(2) Written notice of intent to present evidence at any hearing to be held in the proceeding.

(b) For good cause shown, the Administrative Law Judge may accept late comments or late notice of intent to present evidence.

(c) An interested person shall be given notice of any hearing to be held on the proceeding and of the decision and order issued in the case. In any hearing, the interested person shall have a reasonable opportunity to be heard and to present evidence.

(d) Interested persons shall not be accorded the right of cross-examination.

(e) If a hearing is not held before issuance of the decision and order, an interested person may petition the Commandant to set aside the order and to provide a hearing in accordance with the procedures in §20.905.

Subpart E—Conferences and Settlement

§20.501 Prehearing and other conferences.

(a) The Administrative Law Judge may direct the parties to attend one or more conferences prior to or during the course of the hearing. Parties may request a conference by motion.

(b) The Administrative Law Judge may provide notice of a conference to interested persons, as the Administrative Law Judge deems appropriate.

(c) Reasonable notice of the time and place of the conference will be given to the parties. A conference may be held in person, by telephone conference, or other appropriate means.

(d) Parties, and interested persons when attending, shall come to all conferences fully prepared for a useful discussion of all issues involved in the conference, both procedural and substantive, and authorized to make commitments with respect to the proceedings.

(e) Unless excused by the Administrative Law Judge, failure of a party to attend a conference, after being served with reasonable notice of the time and place, will constitute a waiver of all objections to the agreements reached in the conference and to any order or ruling that results.

(f) The Administrative Law Judge may order that any or all of the following be addressed or furnished before, at, or after the conference:

(1) Motions for discovery.

(2) Motions for consolidation or severance of parties or issues in the civil penalty proceeding.

(3) Method of service and filing.

(4) Identification, simplification, and clarification of the issues.

(5) Requests for amendment of the pleadings.

(g) Stipulations and admissions of fact and of the content and authenticity of documents.

(h) A discussion of the desirability of limiting and grouping witnesses, so as to avoid duplication.

(i) Requests for official notice and particular matters to be resolved by reliance upon the agency’s substantive standards, regulations, and rules.

(j) Offers of settlement.

(k) Proposed date, time, and place of the hearing.

(l) Other matters that may aid in the disposition of the civil penalty proceeding.

(g) A conference is not to be stenographically reported or otherwise recorded unless authorized by the Administrative Law Judge.

(h) At a conference, the Administrative Law Judge may dispose of any procedural matters on which he or she is authorized to rule.

(i) Actions taken as a result of a conference may be recorded in—

(1) A written report;

(2) A stenographic transcript if ordered by the Administrative Law Judge;

(3) A statement by the Administrative Law Judge on the record at the hearing summarizing the actions taken.

§20.502 Settlement.

(a) The parties shall have the opportunity to submit a proposed settlement to the Administrative Law Judge.

(b) A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry. It must also include the reasons why it should be accepted, and it must be signed by the parties or their representatives.

(c) A proposed settlement agreement must contain the following:

(1) An admission of all jurisdictional facts.

(2) An express waiver of further procedural steps before the Administrative Law Judge, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order.

(3) A statement that the order will have the same force and effect as an order made after a full hearing.

(4) A statement that matters in the pleading, if any, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

Subpart F—Discovery

§20.601 General.

(a) Unless otherwise ordered by the Administrative Law Judge, each party and interested person who has filed written notice of intent to present evidence under §20.503 shall make available to all other parties and to the Administrative Law Judge—

(1) The names of any expert and other witnesses intended to be called, together with a brief narrative summary of their expected testimony; and

(2) Copies of all documents and exhibits which the party intends to introduce into evidence.

(b) The Administrative Law Judge may direct the parties to exchange witness lists and documents at a prehearing conference ordered under §20.501 or may direct the exchange to be accomplished by correspondence.

(c) The Administrative Law Judge may establish a schedule for conducting discovery in the proceedings and shall serve a copy of the schedule on each party.

(d) The schedule may include dates by which exchanges of witness lists and
§ 20.603 Interrogatories.
(a) Any party requesting interrogatories shall make a motion to the Administrative Law Judge. The motion must include—
(1) A statement of the purpose and general scope of the interrogatories; and
(2) The proposed interrogatories.
(b) The Administrative Law Judge will review the proposed interrogatories and may enter an order approving the service of some or all of the proposed interrogatories or may deny the motion.
(c) A party shall serve on the party named in the interrogatories the approved written interrogatories.
(d) Each interrogatory must be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated instead of a response. A party, the party’s attorney, or the party’s representative shall sign the party’s responses to interrogatories.
(e) Responses or objections must be made within 30 days after the service of the interrogatories.
(f) If the response to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served, from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the response is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient response to specify the records from which the answer may be derived or ascertained. The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries. The specification must include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

§ 20.604 Requests for production of documents or things for inspection or other purposes.
(a) Any party requesting production of documents or things for inspection or other purposes shall make a motion to the Administrative Law Judge. The motion must state with particularity—
(1) The purpose and scope of the request; and
(2) The documents and materials which are requested to be produced.
(b) The Administrative Law Judge will review the motion and may enter an order approving or denying the motion in whole or in part.
(c) A party shall serve on the party in possession, custody or control of the documents the order to produce, or to permit inspection and copying of documents.
(d) A party may, after approval of an appropriate motion by the Administrative Law Judge, inspect and copy, test, or sample any tangible things that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.
(e) A party may, after approval of an appropriate motion by the Administrative Law Judge, serve on another party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspecting, measuring, surveying, photographing, testing, or sampling the property or any designated object or area. A request to permit entry upon property must set forth with reasonable particularity the item to be inspected and must specify a reasonable time, place, and manner for making the inspection and performing the related acts.
(f) The party upon whom the request is served shall respond within 30 days after the service of the request. Inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection must be stated.

§ 20.605 Depositions.
(a) The Administrative Law Judge shall order depositions only upon a showing of good cause and upon a finding that—
(1) The information sought cannot be obtained more readily by alternative methods; or
(2) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.
(b) Testimony may be taken by deposition upon approval of the Administrative Law Judge of a motion made by any party.
(1) The motion must state—
(i) The purpose and scope of the deposition;
(ii) The time and place it is to be taken;
(iii) The name and address of the person before whom the deposition is to be taken;
(iv) The name and address of each witness from whom a deposition is to be taken;
(v) The documents and materials which the witness is requested to produce; and
(vi) Whether it is intended that the deposition be used at a hearing instead of live testimony.
(2) The motion must state if the deposition is to be by oral examination, by written interrogatories, or a combination of the two. The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Upon a showing of good cause, the Administrative Law Judge may enter and serve upon the parties an order to obtain the testimony of the witness.

(d) If the deposition of a public or private corporation, partnership, association, or governmental agency is ordered, the organization named must designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which he or she will testify. Subject to the provisions of 49 CFR part 9 with respect to Coast Guard witnesses, the designated persons shall testify as to matters reasonably known to them.

(e) Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine.

(f) The witness being deposed may have counsel or another representative present during the deposition.

(g) Except as provided in paragraph (n) of this section, depositions are stenographically recorded and transcribed. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken.

(h) Subject to objections to the questions and responses as were noted at the time of taking of the deposition and which would have been sustained if the witness were personally present and testifying, a deposition may be offered into evidence by the party taking it against any party who was present or represented at the taking of the deposition or who had notice of the deposition.

(i) The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

(j) During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the Administrative Law Judge for a ruling on the objection(s). The Administrative Law Judge may then limit the scope or manner of taking the deposition.

(k) When a deposition is taken in a foreign country, it may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the Administrative Law Judge.

(l) Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence.

(m) A deposition may be taken by telephone conference call upon such terms, conditions, and arrangements as are prescribed in the order of the Administrative Law Judge.

(n) The testimony at a deposition hearing may be recorded on videotape, upon such terms, conditions, and arrangements as are prescribed in the order of the Administrative Law Judge, at the expense of the party requesting the recording. The video recording may be in conjunction with an oral examination by telephone conference held pursuant to paragraph (m) of this section. After the deposition has been taken, and copies of the video recording provided to parties requesting them, the person recording the deposition shall immediately place the videotape in a sealed envelope or a sealed videotape container, attaching to it a statement identifying the proceeding and the deponent and certifying as to the authenticity of the video recording, and return the videotape by accountable means to the Administrative Law Judge. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

§ 20.606 Protective order.

(a) In considering a motion for an order of discovery, or a motion by a party or the person from whom discovery is sought to reconsider or amend an order of discovery, the Administrative Law Judge may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including—

(1) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(2) That the discovery may be had only by a method of discovery other than that selected by the seeking party;

(3) That particular matters may not be inquired into, or that the scope of the discovery shall be limited to particular matters;

(4) That discovery shall be conducted with no one present except persons designated by the Administrative Law Judge;

(5) That a trade secret or other proprietary information may not be disclosed, may be disclosed only in a designated way, or may be disclosed only to designated persons; or

(6) That the party or the other person from whom discovery is sought file specified documents or information under seal to be opened as directed by the Administrative Law Judge.

(b) The Administrative Law Judge may permit a party or a person from whom discovery is sought and who is seeking a protective order to make all or part of the showing of good cause in camera. A record of the in camera proceedings must be made. If the Administrative Law Judge enters a protective order, any in camera record of the showing must be sealed and only released as required by law.

(c) The Administrative Law Judge may upon motion by a party or by a person from whom discovery is sought—

(1) Restrict or defer disclosure by a party of the name of a witness or, in the case of an agency witness, any prior statement of the witness; and

(2) Prescribe other appropriate measures to protect a witness.

(d) Any party affected by any such order shall have an adequate opportunity, once learning of the name of the witness and obtaining a narrative summary of expected testimony, or in the case of a Coast Guard witness, any prior statement or statements, to prepare for cross-examination and for the presentation of the party’s case.

§ 20.607 Sanctions for failure to comply.

If a party fails to provide or permit discovery, the Administrative Law Judge may take such action as is just, including but not limited to the following:

(a) Enter an order that the testimony, document, or other evidence would have been adverse to the party.

(b) Order that, for the purposes of the class II civil penalty proceeding, designated facts will be considered to be established.

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon documents or other evidence withheld.
§ 20.702 Burden of proof.
(a) Except in the case of an affirmative defense, or as provided in paragraph (b) of this section, the burden of proof is on the Coast Guard.
(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

§ 20.703 Presumptions.
In all class II civil penalty proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but a presumption does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the hearing upon the party on whom it was originally placed.

§ 20.704 Scheduling and notice of hearing.
(a) The Administrative Law Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Administrative Law Judge, as early as possible, shall fix the time, place, and date for the hearing and shall notify all parties and interested persons.
(b) A request for a change in the time, place, or date of a hearing may be granted by the Administrative Law Judge.
(c) At any time after commencement of a proceeding, any party may move to expedite the scheduling of a proceeding. A party moving to expedite a proceeding shall—
(1) Describe the circumstances justifying the motion to expedite; and
(2) Incorporate in the motion affidavits to support any representations of fact.
(d) Following timely receipt of the motion and any responses, the Administrative Law Judge may expedite pleading schedules, prehearing conferences, and the hearing, as appropriate.

§ 20.705 Failure of party to appear.
A default order under § 20.310 may be entered against a party failing to appear at a hearing unless—
(a) Prior to the time for the hearing, the party shows good cause to why neither the party nor the party's representative can appear; or
(b) Within 30 days of an order to show good cause, the party shows good cause for failure to appear.

§ 20.706 Witnesses.
(a) Witnesses shall testify under oath or affirmation.
(b) If a witness fails or refuses to testify, the failure or refusal to answer any question found by the Administrative Law Judge to be proper shall be grounds for striking all or part of the testimony which may have been given by the witness, or for any other action deemed appropriate by the Administrative Law Judge.

§ 20.707 Telephone testimony.
(a) The Administrative Law Judge may order that testimony of a witness be taken by telephone conference call. A person presenting evidence may request by motion to have testimony taken by telephone conference call. The telephone conference call will be arranged so that all participants can listen to and speak to each other in the hearing of the Administrative Law Judge. The Administrative Law Judge shall ensure that all participants in the telephone conference are properly identified to allow a proper record to be made by the reporter. Telephone conferences are governed by this part.
(b) A witness may be subpoenaed to testify by telephone conference call. The subpoena in such instances is issued under the procedures in § 20.608.

§ 20.708 Witness fees.
(a) Witnesses, other than employees of a Federal agency, summoned in a class II civil penalty proceeding shall receive the same fees and mileage as witnesses in the courts of the United States.
(b) The party who calls a witness is responsible for any fees and mileage to be received by the witness under paragraph (a) of this section.

§ 20.709 Closing of the record.
At the conclusion of the hearing, the record of the proceeding, as described in § 20.903, will be closed unless the Administrative Law Judge directs otherwise. Once the record is closed, it may be reopened at the discretion of the Administrative Law Judge. The Administrative Law Judge may correct the transcript of the hearing by appropriate order.

§ 20.710 Proposed findings, closing arguments, and briefs.
Before the Administrative Law Judge's decision and upon terms which the Administrative Law Judge may find reasonable, any party shall be entitled to file a brief, proposed findings of fact and conclusions of law, or both. Before the close of the hearing, the Administrative Law Judge may hear oral argument to the extent the Administrative Law Judge deems appropriate. Any brief, proposed findings of fact and conclusions of law, and oral argument must be included as part of the record of the proceeding.
Subpart H—Evidence

§ 20.801 General.
A party is entitled to present its case or defense by oral, documentary, or demonstration evidence; to submit rebuttal evidence; and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

§ 20.802 Admissibility of evidence.
(a) The Administrative Law Judge may admit any relevant oral or documentary evidence, unless privileged.
(b) Relevant evidence is evidence having any tendency to make the existence of any material fact more probable than it would be without the evidence.
(c) The Administrative Law Judge may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 20.803 Hearsay evidence.
Hearsay evidence is admissible in proceedings governed by this part. The fact that evidence is hearsay may be considered by the Administrative Law Judge when determining the probative weight of the evidence.

§ 20.804 Objections and offers of proof.
(a) A party shall state briefly the grounds for objection to the admission or exclusion of evidence. Rulings on all objections must appear in the record. Only objections made before the Administrative Law Judge may be raised on appeal.
(b) Whenever evidence is excluded, the party offering such evidence may make an offer of proof, which must be included in the record.

§ 20.805 Proprietary Information.
(a) Without limiting the discretion of the Administrative Law Judge to give effect to applicable privileges, the Administrative Law Judge may limit introduction of evidence or issue such protective or other orders that in his or her judgment may be consistent with the objective of preventing undue disclosure of proprietary matters, including, but not limited to, matters of a business nature.
(b) Where the Administrative Law Judge determines that information in documents containing proprietary matters should be made available to another party, the Administrative Law Judge may direct the party having possession of the documents to prepare a non-proprietary summary or extract of the original. The summary or extract may be admitted as evidence in the record.

§ 20.806 Official notice.
The Administrative Law Judge may take official notice of such matters as might be judicially noticed by the courts or of other facts within the specialized knowledge of the Coast Guard as an expert body. Where a decision or part of a decision rests on the official notice of a material fact not appearing in the evidence in the record, the fact of official notice must be stated in the decision, and any party, upon timely request, shall be afforded an opportunity to show the contrary.

§ 20.807 Exhibits and documents.
(a) All exhibits must be numbered and marked with a designation identifying the party introducing the exhibit. The original of each exhibit offered in evidence or marked for identification must be filed and retained in the record of the proceeding, unless the Administrative Law Judge permits the substitution of copies for the original document. Copies of each exhibit must be supplied by the party introducing the exhibit to the Administrative Law Judge and to every party to the proceeding.
(b) Unless otherwise directed by the Administrative Law Judge, proposed exhibits to be offered upon direct examination should be exchanged or made available for inspection 5 days prior to the hearing. The authenticity of all exhibits submitted prior to the hearing will be deemed admitted unless written objection is filed and served on all parties, or unless good cause is shown for failure to file a written objection.

§ 20.808 Written testimony.
The Administrative Law Judge may enter into the record written statements of witnesses that are sworn or affirmed under penalties of perjury. Witnesses whose testimony is presented by written statement shall be available for oral cross-examination.

§ 20.809 Stipulations.
The parties and interested persons may, by stipulation in writing at any stage of the proceeding or orally at the hearing, agree upon any pertinent facts or other matters fairly susceptible of stipulation. Stipulations are binding on the parties to the stipulation.

Subpart I—Decisions and Orders

§ 20.901 Summary decision.
(a) Any party may, after commencement of the proceeding and at least 15 days before the date fixed for the hearing, with or without supporting affidavits, move for a summary decision in the party's favor in all or any part of the proceeding on the grounds that there is no genuine issue as to any material fact and that the moving party is entitled to a decision as a matter of law. Any other party may, within 10 days after service of the motion, serve opposing affidavits or countermove for summary decision. The Administrative Law Judge may set the matter for argument and call for the submission of briefs.
(b) The Administrative Law Judge may grant the motion if the filed documents, affidavits, material obtained by discovery or otherwise, or matters officially noted show that there is no genuine issue as to any material fact and that a party is entitled to a summary decision as a matter of law.
(c) Affidavits must set forth such matters as would be admissible in evidence and must show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. When a motion for summary decision is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of facts contained in the opposing party's pleadings. The response to the motion, by affidavits or as otherwise provided in this section, must provide a specific basis to show that there is a genuine issue of fact for the hearing.
(d) Should it appear from the affidavits of a party opposing the motion that the opposing party cannot, for reasons stated, present by affidavit matters essential to justify the party's opposition, the Administrative Law Judge may deny the motion for summary decision, may order a continuance to permit information to be obtained, or may make such other order as is just.
(e) The denial of all or any part of a motion for summary decision shall not be subject to interlocutory appeal.

§ 20.902 Decision of the administrative law judge.
(a) After the closing of the record of the proceeding, the Administrative Law Judge shall prepare a decision containing—
(a) The Commandant shall provide to the interested person, and publish in the Federal Register, notice of and the reasons for the denial.

(b) The decision of the Administrative Law Judge must be based upon a consideration of the whole record of the proceedings. Any proceedings regarding the disqualification of an Administrative Law Judge will be included in the record.

Any person may examine the record of a proceeding at the Hearing Docket Office, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Any person may secure a copy of part or all of the record after payment of reasonable costs for duplication in accordance with 49 CFR part 7.

§ 20.1003 Record of proceedings.
(a) The record of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings will constitute the official record of a proceeding. Any proceedings regarding the disqualification of an Administrative Law Judge will be included in the record.

(b) Any person may examine the record of a proceeding at the Hearing Docket Office, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Any person may secure a copy of part or all of the record after payment of reasonable costs for duplication in accordance with 49 CFR part 7.

§ 20.1004 Petitions to set aside an order and provide a hearing.
(a) If no hearing is held on a class II civil penalty complaint alleging a violation under the FWPCA, any interested person may petition the Commandant, within 30 days after issuance of the order, to set aside the order and to provide a hearing.

(b) If the evidence presented by the interested person in support of the petition is material and was not considered in the issuance of the order, the Commandant shall immediately set aside the order and direct that a hearing be held in accordance with the requirements of this part.

(c) If the Commandant denies a hearing requested under this section, the Commandant shall provide to the interested person, and publish in the Federal Register, notice of and the reasons for the denial.

§ 20.1005 Reopening.
(a) To the extent permitted by law, the Administrative Law Judge for good cause shown in accordance with paragraph (c) of this section, may reopen the record of a proceeding for the purpose of taking additional evidence.

(b) Any party may file a motion to reopen the record within 30 days of the closing of the record of a proceeding. The motion to reopen the record must clearly set forth the facts sought to be proven and the reasons claimed to constitute grounds for reopening the record.

(c) If the Administrative Law Judge has reason to believe that reopening the record of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record of the proceeding may be reopened by the Administrative Law Judge before the Administrative Law Judge’s decision becomes final.

Subpart J—Appeals

§ 20.1001 General.
(a) A party may appeal the Administrative Law Judge's decision by filing a notice of appeal with the Commandant. A party shall file the notice of appeal with the Commandant (G–CJ), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, Attention: Hearing Docket Clerk. A Party shall file the notice of appeal not later than 10 days after service of the Administrative Law Judge's decision on the parties and shall serve a copy of the notice of appeal on each party and interested person.

(b) Any party may appeal only the following issues:

1. The basis for the appeal.
2. Whether each conclusion of law is supported by substantial evidence.
3. Whether each conclusion of law made in accordance with applicable law, precedent, and public policy.
4. Whether there were any abuses of discretion by the Administrative Law Judge.

§ 20.1002 Record on appeal.
(a) The record of the proceeding will constitute the record for decision on appeal.

(b) If the respondent requests a copy of the transcript of the hearing in the notice of appeal and the hearing was recorded or transcribed at government expense, the transcript will be provided upon payment of the fees prescribed in 49 CFR 7.95. If the services of a government contractor were utilized, the transcript must be obtained under the provisions of 49 CFR 7.99.

§ 20.1003 Procedures for appeal.
(a) A party shall file an appeal brief with the Commandant and shall serve a copy of the appeal brief on each other party.

1. The appeal brief must set forth the party’s specific objections to the initial decision or rulings. The appeal brief must state, in detail—
   (i) The basis for the appeal;
   (ii) The reasons supporting the appeal; and
   (iii) The relief requested in the appeal.

2. When the party relies on material contained in the record for the appeal, the party must specifically refer to the pertinent portions of the record.

3. The appeal brief must be submitted to the Commandant within 60 days after service of the Administrative Law Judge’s decision and order, or if a transcript was requested in accordance with § 20.1002(b), within 60 days after receipt of the transcript. After this time has elapsed, additional filings will not be considered as a part of the record of the appeal, unless an extension of time has been granted in writing by the Commandant or the Commandant’s designee and the extended time limit has been met.

(b) Any party may file a reply brief with the Commandant no later than 35 days after being served with the appeal brief. The party filing a reply brief will serve a copy on all parties. If the party filing a reply brief relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript of the hearing in the reply brief.

(c) A party may not file more than one appeal brief or reply brief, unless the party has petitioned the Commandant in writing, and the Commandant or the Commandant’s designee has granted leave to file an additional brief. The Commandant will allow a reasonable time for the party to file the additional brief.

(d) The Commandant has sole discretion to permit oral argument on the appeal. On the Commandant’s own initiative or upon written petition by any party, the Commandant may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(e) The Commandant may allow any person to file an amicus curiae brief in an appeal of an initial order.

§ 20.1004 Civil penalty appeal decisions.
(a) The Commandant shall review the record on appeal to determine if the Administrative Law Judge committed
prejudicial error in the proceedings or that the Administrative Law Judge’s decision should be affirmed, modified, or reversed. The Commandant may affirm, modify, or reverse the Administrative Law Judge’s decision or may remand the case for further proceedings.

(b) The Commandant shall issue a decision and order on an appeal in writing and shall serve a copy of the decision and order on each party and interested person.

Subpart K—Finality and Availability of Orders

§ 20.1101 Finality of order.
(a) Unless appealed pursuant to subpart J of this part, the decision and order issued by the Administrative Law Judge will constitute the final order assessing or denying a class II civil penalty.
(b) If the Commandant issues a decision and order under subpart J of this part, the decision and order of the Commandant constitute the final order assessing or denying a class II civil penalty.

§ 20.1102 Availability of decisions and orders.
(a) Copies of decisions and orders made in the adjudication of class II civil penalties are available for inspection and copying at—
(1) The document inspection facility at any Coast Guard District Headquarters; or
(2) The Coast Guard Headquarters Hearing Docket Office Public Reading Room.
(b) Requests for a copy of a decision and order may be made to the Hearing Docket Clerk. The person requesting a copy will be billed for the copying costs in accordance with 49 CFR 7.93.

P.E. Versaw,
Chief Counsel, Rear Admiral, U.S. Coast Guard.

[FR Doc. 93–7713 Filed 4–5–93; 8:45 am]
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### Reader Aids

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**LIST OF PUBLIC LAWS**

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws. Last List March 31, 1993

**ELECTRONIC BULLETIN BOARD**

Free Electronic Bulletin Board Service for Public Law Numbers is available on 202-275-1538 or 275-0920.
Guide to Record Retention Requirements in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

The GUIDE to record retention is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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