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## OFFICE OF GOVERNMENT ETHICS

**5 CFR Part 2634**

**RIN 3209–AAOO**

## Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Government Ethics is amending its interim rule on executive branch financial disclosure. The amendments contain procedural clarifications for filing public and confidential financial disclosure reports. With regard to public reports, OGE is eliminating the requirement that agencies provide an annual update to the list of nonpolicy-making positions excluded from filing. Additionally, the amendments clarify what constitutes the date of filing for purposes of determining when a public report is subject to a late filing fee. For confidential report filers, the amendments codify earlier informal OGE guidance to agencies on two matters: the exclusion of special Government employees (SGEs) from the requirement for incumbent reports, and the exclusion of employees (other than SGEs) from the requirement for new entrant reports if they are not expected to serve for more than 60 days in a position otherwise designated for filing. Finally, the amendments supply the form number for the standard confidential disclosure form, which was not known when the interim rule was first published.

**DATES:** Interim rule amendments effective July 21, 1993. Public comments on these amendments are welcome and must be received on or before September 20, 1993.

**ADDRESSES:** Comments should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: G. Sid Smith.

**FOR FURTHER INFORMATION CONTACT:** G. Sid Smith, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

**SUPPLEMENTARY INFORMATION:** This document amends an interim rule which revised both the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended by, *inter alia*, the Ethics Reform Act of 1989, Pub. L. 101–194), and Executive Order 12674 of April 12, 1989 (as amended). That interim rule was published on April 7, 1992 (57 FR 11800–11830) and corrected on May 22 and December 31, 1992 at 57 FR 21854–21855 and 57 FR 62605, respectively.

Executive branch employees in certain positions of a confidential or policy-making character which are excepted from the competitive service are required to file public financial disclosure reports, unless excluded under regulatory guidelines. The interim rule which was published in April 1992 requires agencies to provide OGE with a list of such positions being excluded prior to the due dates for reports which such employees would otherwise have to file. That interim rule also required agencies to provide an annual update to that list, reflecting deletions, additions, or an indication of no change. It has been determined that the annual update is unnecessary and redundant. Therefore, that requirement is being eliminated by an amendment to § 2634.203 of subpart B of the interim rule.

For filers of public financial disclosure reports, the interim rule of April 1992 implemented a statutory late filing fee for reports filed more than thirty-days after the normal due date, including any authorized extensions. Questions have arisen as to what should constitute the date of filing for purposes of determining whether a report is filed more than thirty days late. After examining the nature of this thirty-day period, OGE concluded that the date of filing for purposes of determining whether a public report is more than thirty days late should be the date of receipt by the agency (which the rule already requires agencies to note on reports when received), not the filer's submission date. Accordingly, an amendment to § 2634.704 of subpart G of the interim rule specifies that the date of receipt by the agency will constitute the date of filing for purposes of determining whether a report is filed more than thirty days late and therefore subject to a late filing fee. The thirty-day period was not intended to be an extension of the due date, but merely a grace period for purposes of imposing the late filing fee. While it would be reasonable for agencies to consider the filer's submission date and to allow for any attendant administrative delays in determining whether a report meets normal due dates, it would not be reasonable to leave similarly indeterminate the thirty-day grace period for purposes of imposing a late filing fee. That grace period is itself full allowance for administrative delays. To extend the thirty-day grace period for additional administrative delays inappropriately suggests to filers that they may view the thirty days as a due date extension. This has resulted in submission delays by some of those subject to public disclosure until the end of the grace period.

For filers of confidential financial disclosure reports, the April 1992 interim rule included SGEs among those required to file annual incumbent reports if they serve more than sixty days. That was not intended, since SGEs are also required to file new entrant reports upon each annual appointment or reappointment. Therefore, an amendment to § 2634.903 of subpart I of the interim rule eliminates the requirement for SGEs to file incumbent confidential disclosure reports.

The April 1992 interim rule included as new entrant confidential disclosure filers all employees who serve in positions designated for filing, regardless of the number of days it was anticipated that they would be performing duties in the position. That was not intended for employees (other than SGEs) who are not anticipated to perform duties for more than 60 days in a designated filing position, such as employees who serve temporarily in a position in an acting capacity. Therefore, another amendment to § 2634.903 of subpart I of the interim rule eliminates the requirement for

employees (other than SGEs) to file new entrant reports when the agency ethics official determines that they are not anticipated to perform duties for more than 60 days in a confidential filer position.

Finally, at the time the interim rule was published, the form number for the standard confidential disclosure form was not yet known. Therefore, an amendment to § 2634.601 of subpart F of the interim rule supplies that number, SF 450.

**Administrative Procedure Act**

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to an interim rule concern minor procedural clarifications which conform with current practice. The Office of Government Ethics will review any comments received during the comment period and consider any modifications which appear warranted prior to issuing a final rule.

**Executive Order 12291**

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

**Regulatory Flexibility Act**

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these amendments to the interim rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal executive branch agencies and employees.

**Paperwork Reduction Act**

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to these amendments to the interim rule because they do not contain any additional information collection requirements which require the approval of the Office of Management and Budget.

**List of Subjects in 5 CFR Part 2634**

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, and Trusts and trustees.

Approved: April 26, 1993.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of subchapter B of Chapter XVI of title 5 of the Code of Federal Regulations as follows:

## PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

### Subpart B—Persons Required To File Public Financial Disclosure Reports

2. Section 2634.203 is amended by revising paragraph (c)(1) to read as follows:

**§ 2634.203 Persons excluded by rule.**

* * * * *

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file.

* * * * *

### Subpart F—Procedure

3. Section 2634.601 is amended by revising paragraph (a) to read as follows:

**§ 2634.601 Report Forms.**

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SF 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

* * * * *

### Subpart G—Penalties

4. Section 2634.704 is amended by adding a new paragraph (f) to read as follows:

**§ 2634.704 Late filing fee.**

* * * * *

(f) *Date of filing.* The date of filing for purposes of determining whether a public financial disclosure report is filed more than thirty days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). The thirty-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

### Subpart I—Confidential Financial Disclosure Reports

5. Section 2634.903 is amended as set forth below:

A. Revising paragraph (a);

B. Republishing the introductory text of paragraph (b)(2);

C. Revising the last sentence of paragraph (b)(2)(ii); and

D. Adding a new paragraph (b)(2)(iii).

The revisions, republication and addition read as follows:

**§ 2634.903 General requirements, filing dates, and extensions.**

(a) *Incumbents.* A confidential filer who holds a position or office described in § 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report as an incumbent, containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. No incumbent reports are required of special Government employees described in § 2634.904(b) of this subpart, but they must file new entrant reports under § 2634.903(b) of this subpart upon each appointment or reappointment. For confidential filers under § 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) *New entrants.* * * *

(2) However, no report shall be required if the individual:

* * * * *

(ii) * * * The agency may request that the individual update such a report if more than six months has expired since it was filed; or

(iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904 of this subpart for more than 60 days in the following twelve-month period, as determined by the designated agency ethics official or delegate. That may

occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a) of this subpart. If the individual actually performs the duties of such position for more than 60 days in the twelve-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. Paragraph (b)(2)(iii) of § 2634.903 does not apply to new entrants filing as special Government employees under § 2634.904(b) of this subpart.

* * * * *

[FR Doc. 93–17330 Filed 7–20–93; 8:45 am]

BILLING CODE 6345–01–U

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Parts 1924, 1930, 1944, 1951, 1955 and 1965

RIN 0575–AA51

### Rural Rental Housing Displacement Prevention

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its rural rental housing (RRH) and labor housing (LH) regulations which address the prepayment of loans, incentives and other actions taken by the Federal Government to avert prepayment. The action is being taken to alleviate problems caused by the displacement of tenants from projects after the FmHA loans are prepaid. This rulemaking action incorporates comments to those portions of the interim rule and make the changes required by the Cranston-Gonzalez Act and the Housing and Community Development Act of 1992.

**EFFECTIVE DATE:** August 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Patrick Sheridan, Branch Chief, Multiple Housing Servicing and Property Management Division, FmHA, room 5331, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1599.

**SUPPLMENTARY INFORMATION:**

#### Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more, and there will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will also be no significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

#### Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments; 10.415, Rural Renting Housing Loans; and 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the Administrator, FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities, because only one to two hundred borrowers will likely attempt to prepay annually, and FmHA anticipates funding approximately 50–75 applications nationwide each year.

#### Civil Justice Reform

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

#### General Information

*Background and Statutory Authority*

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, provided that FmHA section 514 and section 515 multi-family housing borrowers who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market with minimal restrictions. Those who received loans on or after December 21, 1979, are eligible to prepay only after their restrictive-use requirements expire in either 15 or 20 years from the date of the loan or the servicing action. In some areas of the country, the prepayment of FmHA multi-family loans threatened to lead to acute housing shortages for low- and moderate-income people and severe problems for displaced tenants.

To alleviate these problems, FmHA issued revised regulations on March 19, 1987 (52 FR 8606), to ease the burden of displaced tenants. Several legislative mandates for moratoriums on prepayment had been enacted until legislative action was taken with the passage of the Housing and Community Development Act of 1987 (HCDA 1987). The Act included provisions addressing "Rural Rental Housing Displacement Prevention." As part of the law, Congress mandated that FmHA issue regulations to carry out the legislation within 60 days of enactment. The mandate was addressed by an interim rule with request for comments, published on April 22, 1988 (53 FR 13244). An emergency change to the interim rule due to an initial misinterpretation of the law was published February 13, 1990 (55 FR 4985). Comments to the interim rule were extensive. As a result, a new proposed rule with request for comment was published on July 20, 1990 (55 FR 29601). The new proposed rule addressed comments received on the interim rule, provided additional guidance to field offices on implementation of the law, and made changes in additional regulations which the law impacted and/or in which changes needed to be made to be consistent with these provisions.

In addition, Congress passed the Department of Housing and Urban Development Reform Act of 1989 (H.R. 1), which included, in addition to other actions pertaining to FmHA, the provision that no rural rental housing

loan whose contract was entered into subsequent to December 15, 1989, could be prepaid, nor may FmHA request refinancing. Congress mandated that the provisions of the Act be implemented within 6 months of passage of the Act. An interim rule with comment implementing these and other provisions of the Act was published on July 20, 1990 (55 FR 29558). In November 1990, the Cranston-Gonzalez Act was passed which include a technical amendment retroactively restricting prepayment to initial loans only made on or after December 15, 1989.

In addition, Congress passed the Housing and Community Development Act of 1992, which included, in addition to other actions pertaining to FmHA, provisions that required prepayment prevention incentives to be offered to projects whose initial loans were made between December 21, 1979, and December 15, 1989. The Act also included a provision allowing the offer of excess rents as additional return to owner as an additional incentive to qualified section 8 assisted projects, and called for certain preservation activities to be carried out in the FmHA National Office.

This final rule incorporates changes and comments to the interim and proposed rules addressing restrictions on prepayment (March 19, 1987, 52 FR 8606; April 22, 1988, 53 FR 13244; February 13, 1990, 55 FR 4985; July 20, 1990, 55 FR 29601; and July 20, 1990, 55 FR 29558). Accordingly, the sections of the interim rule published on July 20, 1990, which are hereby finalized are §§ 1944.215, 1944.236, 1944.237 and 1944.238 of subpart E of part 1944, § 1951.251 of subpart F of part 1951, and 1965.90 of subpart B of part 1965, some in slightly revised form or moved to different places in FmHA procedure. Changes required by the 1990 Act and the Housing and Community Development Act of 1992 have also been incorporated.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. However, the actions pertaining to the technical amendments of the Cranston-Gonzales Act and the provisions of the Housing and Community Development Act of 1992 are not published for proposed rulemaking since they involve only rules of agency procedure and internal agency management or are sufficiently clear in legislation to allow for minimal interpretation, thereby making publication for comment unnecessary.

Comments to appraisal issues addressed in the proposed rule written for HCDA 1987, suggested that changes were required to the multi-family housing appraisal procedure (FmHA Instruction 1922–B). All references to the completion of appraisals relating to prepayment, with the exception of one issue, have been deleted from this regulation and reference made to the existing FmHA multi-family housing appraisal procedure. The issue remaining concerns the consideration of value of an FmHA multi-family project as an unsubsidized conventional project when appraising the project for prepayment purposes. The comments suggesting appraisal changes are not addressed in this rule-making action but are incorporated into a revision of FmHA Instruction 1922–B.

This rule will differ from the two interim rules currently in effect in that:

1. An entirely new subpart E to part 1965 will address all prepayments and restrictions on use of multi-family housing loans.

2. Several regulations are being modified to bring provisions into compliance with the prepayment requirements. These regulations include: Subpart C of part 1930, including Exhibits B and E addressing rent increases and rental assistance; subpart D of part 1944 addressing labor housing; subpart E of part 1944 addressing rental housing loan making; subpart L of part 1944 addressing tenant grievances and appeals; subpart F of part 1951 addressing graduation; subpart N of part 1951 addressing unauthorized assistance; and subpart B of part 1965 addressing transfers, reamortizations and payments in full.

3. Subparts A and C of part 1955, addressing foreclosures and sale of inventory property, are being amended to provide the same protections to tenants in foreclosed and inventory projects as are provided in prepaying projects.

4. Guide acceleration notices and notification letters to tenants are being provided to field offices simultaneously with the publication of this regulation. The notices and letters previously were published for comment, but will not become part of the CFR.

5. Guidance to field offices on documenting the ability of a borrower to prepay, developing incentives to avert prepayment and determining the need for housing have been included. A checklist for requesting prepayment and a model for developing incentives to avert prepayment have been developed. With the exception of the checklist, the preceding items are classified "Internal Agency Management" and will not be printed in the CFR. The rationale for changes made are provided in the appropriate portions of the "Comments" section of this Federal Register.

6. No special appraisal instruction, with the exception of mandating that loans for equity and sale to nonprofits be based on unsubsidized conventional appraisals, appears in the procedure. All prepayment guidance on appraisals references FmHA Instruction 1922–B. The rationale for using unsubsidized conventional appraisals for all prepayment-related purposes is provided in the "Appraisal" portion of the "Comments" section to this Federal Register.

7. Discrepancies between the two current interim rules are rectified, and the prohibition on prepayment of new loans is being changed to loans to build or acquire new units, rather than all loans. The legal reference and further rationale for this action is provided in the section addressing H.R. 1 in the "Comments" section to this Federal Register.

8. The use of restrictive-use provisions for the life of the loan is being introduced for accelerated loans made to build or acquire new units made on or after December 15, 1989.

In addition, direction for "grandfathering" actions taken prior to the effective date of this regulation are provided for in the appropriate portions of the "Comments" section to this **Federal Register**, and will be reiterated in the Procedure Notices sent to the field to implement these regulations. The directions address:

1. Incentive offers already made and accepted;

2. Loans to build or acquire new units obligated and closed on or after December 15, 1989;

3. Subsequent loans obligated and closed on or after December 15, 1989.

A summary of the comments received to the two interim rules and the decisions made concerning the comments follow:

Ten comments were received concerning the proposed rule for HCDA 1987: five from tenant advocacy groups (one submitted two comments); three from borrowers, borrower organizations, or consultants; and two from one FmHA employee. Of the comments received to the interim rule concerning H.R. 1, two contained sections relevant to this rulemaking action, both from a borrower organization or borrower consultant.

*General Comments*

Comments on the regulation in general considered the regulation an improvement over the interim rule. The creation of an entirely new regulation,

including the chronology of prepayment steps and additional processing guidance was considered helpful. Other comments suggested the time that had elapsed between publication of the interim rule and the proposed rule was too long. A few comments stated that the submission of comments was not to imply acceptance of the constitutionality of the law upon which the regulation is based. The provisions of the incentive model were considered unfair by other commentors, who suggested that FmHA was violating a contract. These comments went on to suggest that no borrower would accept an incentive under those conditions, and suggested FmHA could therefore find many projects sold to nonprofit organizations. Other comments suggested FmHA has been violating tenant rights by the inappropriate acceptance of prepayment requests. Finally, several comments considered the regulations still to confusing. Where specific comments were included with the preceding general comments, the specific comments and FmHA's responses are incorporated in the following materials.

There was also several comments which pointed out a discrepancy between the interim rule published in response to H.R. 1 and this rule. H.R. 1 provided that no loan obligated after December 15, 1989, could ever be prepaid. This regulation makes no note of the preceding prohibition and provides for restrictive-use provisions for equity incentive loans. The statutory prohibition on prepayments for the life of a loan has since been limited to initial loans by the Cranston-Gonzalez Housing Act of 1990. Therefore, the aforementioned discrepancy no longer exists. This regulation administratively extends the prohibition on prepayment to all loans made to build or acquire new units obligated on or after December 15, 1989. The prohibition has been included to ensure that subsequent loans to build or acquire new units are not substituted for initial loans in order to avoid the prepayment prohibition.

*Department of Housing and Urban Development Reform Act of 1989*

Comments to the interim rule concerning the above law which are relevant to this procedure and resulting changes are addressed below.

There was a conflict, as stated in the previous section, between the interim rule addressing H.R. 1 and the earlier version of this rule. As previously stated, this discrepancy has been resolved.

Clarification was requested concerning the relationship between the following three new provisions of the Act: prohibition on prepayment, guaranteed equity loans, and occupancy surcharges. Discussion addressing the latter two issues is not included in this final rule. However, the Cranston-Gonzalez Act does provide that the prohibition on prepayment, occupancy surcharges, and guaranteed equity loans applies to initial loans made on or after December 15, 1989. This required prohibition on prepayment is contained in this rule-making action. To implement the Act, the prohibition on prepayment has been extended to all loans made to build or acquire new units. This action was considered necessary to prevent borrowers from by-passing the prepayment prohibition by building or acquiring new phases to projects through a subsequent loan, rather than a new "initial" loan. The Agency believes this to be the intent of Congress when the term "initial" loans was used. Although the prohibition on prepayment has been extended to subsequent loans to build or acquire new units, the prepayment prohibition and provisions for occupancy surcharges do not apply to equity take out subsequent loans.

Clarification was requested on consolidated loans where only one loan is subject to the prepayment prohibition and guaranteed an equity loan in 20 years. Since subsequent loans (except those used to build or acquire new units) are no longer subject to separate prohibitions or prepayment conditions, conflicting restrictions and permissions will not occur if the initial loan was made prior to December 15, 1989. If, however, the initial loan was made after December 15, 1989, none of the consolidated loans may be prepaid. The consolidated loans will be subject to the occupancy surcharge and may receive a guaranteed equity loan when eligible. If a subsequent loan to build or acquire new units is made after December 15, 1989, and consolidated with an initial loan made prior to December 15, 1989, the subsequent loan cannot be prepaid. However, the subsequent loan does not contain a requirement for an occupancy surcharge, nor is the loan able to qualify for an equity take-out loan in 20 years.

The issues may affect loans obligated and closed between the passage of H.R. 1 and/or the Cranston-Gonzalez Act and the promulgation of this regulation.

1. Borrowers with subsequent loans, other than those to build or acquire new units, which were closed with a prohibition on prepayment, must be contacted to determine whether the borrower wishes to have their closing documents refiled, at their own expense, with the prohibition removed and 20-year restrictive-use provisions substituted.

2. Subsequent loans to build or acquire new units, closed during the period in question with restrictive-use provisions rather than a prohibition on prepayment, will be allowed to keep the provisions as they are.

Documentation is to be placed in the casefiles to record any decisions made or actions taken concerning the preceding issues.

*Comments to Subpart E of Part 1965*

Section 1965.202

Several of the definitions were questioned and the need for additional definitions was suggested.

"Affordable housing" is defined as housing whose rents will not create new or increased rent overburden for tenants of prepaying projects.

Several comments addressed the definition of "displaced," along with the discussions of restrictive-use provisions to alleviate displacement. It was suggested that long-term, rather then immediate displacement should be addressed, and particularly displacement which occurs because tenant income falls. The discussions of displacement, rent overburden, and restrictive-use now clarify that tenants whose rent payment is based on 30 percent of income at the time of prepayment (e.g., on rental assistance, section 8 or paying overage) will continue to have rents determined by the same method, even if the rental payments are reduced. Those households paying more than 30 percent of income (e.g., basic or full-profit rents) may have rents based on 30 percent of income, but the rent at time of prepayment may be set as a minimum. The definitions also provide that third party rental payments, if greater than 30 percent of income, will not be classified as rent overburden.

It was suggested that tenant associations and cooperatives be added to the definition of local nonprofit corporations. This was considered unnecessary. Such groups would already be included as eligible if they meet the other relevant criteria established in the regulations.

It was suggested that the definition of "market area" be changed so as not to limit the area to what the market area was at the time of loan approval, but to consider the project's current market area. The definition was clarified to reflect the comment.

Several comments pointed out that there was no definition offered of "minorities," even though decisions concerning minorities must be made in

several instances. The definition of "minorities" has been added.

In response to comments concerning clarity in the use of the term "Protected", we have added a definition of "Protected" population.

"Protected" will refer to those individuals and families to whom a particular restrictive-use provision applies.

Section 1965.203

Two comments suggested that nonprofit organizations not be unilaterally removed from notification lists for not renewing their request for notification annually. In response to the comments, organizations will not be removed unless they are given 30 days notice to renew their listing.

Section 1965.205 and Exhibits B and C

Suggestions were made that the checklist for requesting prepayment should be included in the CFR so that borrowers know what is required, and that additional guidance be included describing what is required to document a complete prepayment request and ability to prepay. The checklist has been changed to a handout which explains what is needed for a complete prepayment request.

Other comments addressing the request to prepay suggest that too much information is required. It was suggested that in some cases borrowers may need a professional market analysis and, additionally, FmHA employees do not have the skill needed to evaluate the materials submitted. It was decided that all information requested by FmHA is necessary, both to be used to craft an incentive offer and to determine if the prepayment can be accepted. In many cases, the information is also necessary in order to evaluate the ability of the borrower to prepay. In communities with strong conventional markets, the data should not be burdensome; where the conventional market is less strong, the borrower is expected to have closely evaluated the financial implications before deciding to prepay, and so should have the required information available. As to the second comment, FmHA employees routinely make complex loan-making decisions similar to the decisions required in this regulation, so there is no reason to doubt their ability to make these decisions.

Sections 1965.205 and 1965.206

Several comments suggested that mandated timeframes needed to be clarified. We therefore clarified that the 180-day tenant notification period prior to acceptance of prepayment does not begin until a prepayment request, judged by the Servicing Office to be complete, has been received. Additionally, tenants, the applicable FmHA State Office, and nonprofit organizations must all be notified within 15 working days of the receipt of a prepayment request determined complete by the Servicing Office.

Sections 1965.206(b)(2), 1965.215 (d)(3) and (d)(4), Notification to Tenants, and Letters of Priority Entitlement

There were several comments concerning issues in the Notifications to Tenants. Several borrowers and borrower organizations suggested that tenants should not be notified if the borrower intent is clearly to receive an equity loan, and not to prepay the project. The suggestion was not adopted, since the regulation applies only to instances where the borrower intends to prepay a loan, in which instance the law mandates that tenants be notified.

Several comments pointed out that the notification letter excludes tenants in 100 percent project-based section 8 projects from commenting if the borrower intends to retain project-based section 8 after the prepayment. Other comments noted that tenants should be advised that restrictive-use provisions for 100 percent project-based section 8 contract projects remain in effect for the period stated, even if section 8 funding runs out before that date. Both comments have been adopted.

Several comments suggested that the notification letter is too long, and that tenants are not given enough information. It was also noted that the tenants' right to comment was not prominently mentioned. It was suggested that the letters include the decision making process FmHA must follow, a description of the exceptions which allow for an early prepayment, a better description of alternative comparable housing, an explanation of the potential effect of HUD section 8 "opt-out" provisions on tenants, the effect an equity loan to avert prepayment may have on tenants, and the limitations of Letters of Priority Entitlement (LOPE) letters. It was also suggested that regardless of the amount of detail a guide letter may contain, if the letter is not issued properly by the Servicing Office, the tenants will not receive necessary information.

The notification letters to tenants have been revised to consist of a cover letter containing basic information with attachments containing more complete information. The request for tenant comment is now stated in capital letters closer to the beginning of the letter. Attachments to the guide notification letters now provide guidance to field offices on completion of the letters. We have also added that tenants must be periodically advised of the status of the prepayment request and the actions being taken.

There were several comments suggesting additional or different wording be included in the notification letter to tenants. In some cases, the suggested language was phrased in industry, rather than lay, terminology. Much of the suggested language was not used in order to keep the letter comprehensible to tenants. Suggestions were followed when possible to do so.

There were several comments concerning LOPEs. One comment suggested that applicants for housing should be issued a LOPE, along with current tenants. This suggestion was not followed. If eligible prospective tenants are already on a waiting list for a project, the prepayment should not be accepted on the project without restrictive-use provisions. Additionally, if the restrictions are to extend for longer than 2 years, LOPEs will not be available. Neither prospective tenants who make applications after the date a prepayment request has been submitted nor tenants who are leased units after a prepayment request is received are considered eligible for a LOPE.

One comment stated that LOPEs give priority only for FmHA multi-family housing, but should give priority for all federally subsidized housing. In some instances, HUD may give preference to holders of LOPEs. However, the current statute limits preference to projects assisted by FmHA.

Tenant advocates suggested that LOPEs be provided after prepayment when restrictive-use provisions are due to expire, or when tenants are displaced for other reasons, such as decreased income. It was also suggested that LOPEs be available to tenants in all prepaying projects, even when restrictive-use provisions remain in place. As situations were eliminated where tenants could be displaced due to reduced income, we have rejected the suggestion. Tenants will be advised at the time of prepayment of the length of time remaining on the restrictions, and advised to seek other housing before that time if they are likely to be affected. LOPEs will not be provided in cases where current tenants are protected for as long as they live at the project, or where the project will remain restricted for at least 2 years. It was determined that including the extended eligibility for LOPEs would benefit prepaying landlords more than tenants. If LOPEs were provided in those cases, landlords

who sign restrictions may encourage tenants to receive LOPEs and move, thus circumventing the intent of the legislation.

Section 1965.206(b)(5) and Exhibit C

One comment suggested that the proposed language to be inserted in the lease of new tenants, notifying a tenant that the housing may not continue as low- or moderate-income housing be submitted to FmHA for approval with the prepayment request. This suggestion was adopted, along with the requirement that the lease language to be used after prepayment, by borrowers proposing to prepay with restrictive-use provisions, be submitted for review.

Section 1965.213 and Exhibit D

There were several comments addressing incentives to avert prepayment and the model for determining these incentives.

Section 1965.213(a)(1)

One borrower representative inquired as to why the FmHA regulation limits the equity loan and outstanding debt to 90 percent of appraised value, while the law allows equity loans for up to 90 percent of the equity. The FmHA regulation complies with the maximum guidelines established by law. If equity loans were granted up to the maximum amount established by law, outstanding debts on projects could potentially equal close to 100 percent of appraised value, which is for a greater percentage than currently allowed for new construction. The proposed limit has therefore been maintained.

Section 1965.213(a)(2)

There appears to be sufficient confusion among comments concerning Rental Assistance (RA) as an incentive to require clarification. In addition, a change was made in the extent to which RA will be granted to avoid its overuse. As a result, RA will be given to the extent necessary to ensure that tenants in the project and on the waiting list are protected after the incentive package is granted, to the same extent that tenants were protected prior to the incentive. When additional RA is granted as an incentive with no other financial incentives, the increase may be justified by a change in market conditions which has led to vacancies at the project which can only be alleviated by RA. Since the entire incentive package is to be obligated at the same time, no incentive will be obligated until there is both sufficient funding and RA available to fund the entire incentive package.

Section 1965.213(a)(3)

A comment was submitted concerning more appropriate factors to use when determining maximum return on investment, and how the information concerning the factors would be distributed to the field. The maximum return on investment has been modified to allow for a redefinition of project equity when incentives are developed. The rate of return will (a) remain the same if an equity loan is being offered as an incentive, or (b) become the greater of the existing rate of return or 2 percent above the 30 year Treasury Bond rate, rounded to the nearest ¼ percent, if no equity loan is offered. The Treasury Bond rate used will be the rate as of the first business day of the month following receipt of the complete prepayment request.

Sections 1965.213 (b)(2), (b)(3), and Exhibit D

Several comments were submitted by tenant advocates which suggested the reason project-based section 8 projects wished to prepay their loans was to gain access to the unlimited return on investment they would receive from the HUD rents if FmHA did not limit returns. In addition, comments by both tenant advocates and industry representatives pointed out that since this housing could be lost to the low-income market when the 20-year Housing Assistance Payment (HAP) contract expires and the FmHA loan has been prepaid, these borrowers should be offered adequate incentives to not prepay. The Housing and Community Development Act of 1992 effectively implements the preceding suggestion. The Act allows FmHA to offer as an additional incentive the permission to owners of projects with project-based section 8 to receive rent in excess of the amount determined necessary by FmHA to defray the cost of long-term repair or maintenance of the project.

Previous Section 1965.213(c)(4) and New (c)(1)

A tenant advocate suggests that legislation mandates restrictive-use provisions for at least 20 years, and asks why no provisions were made for restrictions lasting longer. It was determined that restrictions for varying lengths of time would be too difficult to deal with administratively. However, any borrower may request longer restrictions and a potentially larger incentive. If in agreement, the State Director or other authorized official could agree to the longer term and larger incentives so long as the larger incentives are allowed by statute.

Previous Section 1965.213(d)(3) and New Exhibit E

There appears to be misinterpretation concerning the statement that if prepayment could be accepted without restrictions, an equity loan should not be part of the incentive offer. Comments suggest that it was believed the regulation meant no incentive offer would be made if prepayment were to be accepted with restrictive-use provisions. An attempt to have the borrower agree to extend low-income use must be made in all cases. If after attempts to extend the low-income use have failed, prepayment may be accepted with no restrictions only if the housing is clearly not needed; that is, there is a surplus of suitable, comparable, affordable low-income housing in the community and the situation is not judged to be temporary. This provision was left unchanged.

Previous Section 1965.213(d)(5) and New Exhibit E

Several comments apparently misconstrued the meaning of the provision that incentives offered could be higher to an acceptable transferee than to a current borrower. This is clarified to make clear that the intent is to make incentives commensurate with the borrower's capability and willingness to continue to meet the purposes of the program, as required by law. Therefore, an uncooperative and/or unresponsive borrower would be encouraged by the structuring of the incentive offer to transfer the project. Determination of eligibility for an equity loan would not differ from the determination of eligibility for a loan for new construction or acquisition.

Exhibit D

There were few specific comments about the incentive model during the comment period, except to note its complexity. Comments were received from both a borrower organization and FmHA staff members after the comment period was over. We adopted a suggestion by an FmHA staff member for a simplified method for determining the equity portion of the incentive offer. We also simplified the reminder of the incentive model.

Of the comments received during the comment period, most comments advised us that the incentive model was too complicated for use by our field staff. Many of the comments revolved around the derivation of "cap" rates. One commenter pointed out that since different calculators may determine the "present value" of future money slightly differently, the formula used should be

published. Due to revisions in the model, the comments are not applicable.

One FmHA employee commented that the proposed model uses currently approved budgets which may not have rents set at levels adequate to meet the expenses required under an incentive package. This problem remains under the revised model. However, the model now requires that budgets be adjusted to provide for rents adequate to service expenses under the incentive package. Without the adjustment, the rents and budgets used to determine the equity loan portion of an incentive offer may be artificially low. Other suggestions for modification of the development of the budget were made by various comments and, in most cases, adopted.

Several comments suggested that incentive offers made prior to the effective date of this procedure be "grandfathered." Field offices are advised that incentive offers which were appropriately derived, offered by FmHA and accepted by the borrower are "grandfathered" with the effective date of this procedure.

Several comments suggested that all incentive offers be at the maximum allowed by law; otherwise, the projects may be sold to nonprofit organizations which would be more costly to the government. One borrower organization suggested that:

(1) Maximum incentives need to be offered to encourage borrowers to remain in the program:

(2) Incentives are less expensive than replacing the housing projected to be lost to the program;

(3) It is irrelevant to expect FmHA projects to be taken out of the program by borrowers, as FmHA would not allow the borrowers to prepay anyway;

(4) Since projects appraised as FmHA subsidized housing are not compared to unsubsidized conventional housing, there is no reason for conventional rents to be used for comparison when a borrower wishes to prepay; and

(5) Since priority for fundings goes to low-income areas, it is rare that conventional rents would exceed either FmHA basic or market rents, thereby unfairly penalizing borrowers in those areas when calculating incentives.

Conversely, another comment suggested that borrowers whose projects were included in the proposed Category No. 3 should not receive any equity loan as part of the incentive package as it could be construed that there is no alternative to FmHA housing in their community and the borrower is not losing money by not prepaying. Several comments also suggested that since sales to nonprofit organizations would ultimately save the government money, incentive offers should be set to take into account the reduced cost of the sale option.

The revised incentive model will continue to propose incentives to borrowers in much the same method as the proposed model. Those borrowers who would lose money by not prepaying will be compensated for their foregone opportunity. Borrowers with no apparent alternative use for the housing but who may have the ability to prepay may receive an incentive to compensate for agreeing to forego prepayment for an additional 20 years of low- and moderate-income use. As there is no way to determine the long term costs of lending to a specific for-profit borrower vs. an unknown nonprofit borrower, nor is there any way to be certain that if an incentive offer is rejected, an eligible nonprofit organization would want to purchase a project, an incentive offer derived from the model is clearly the first step FmHA must make after a bonafide prepayment request is received.

One comment suggested that the calculation of the loss to the borrower of not converting to unsubsidized conventional housing should be adjusted by the conversion costs assuming rehabilitation to a market standard. The Agency recognizes that conversion costs should take into account both hard and soft costs, including the cost of adding amenities, making upgrades and otherwise elevating the quality of the housing to its highest and best residential use and include losses due to vacancies, rent skips, rent withholding, legal costs, advertising, etc. However, this suggestion was not addressed in this part of this regulation. The suggestion will be taken into consideration as part of modification to the appraisal regulations referenced as part of this regulation.

Conversely, borrower organizations suggested that an inflation rate be built into the model. This suggestion was not considered practical as part of the new model.

Other suggestions included using the higher of the subsidized or unsubsidized conventional appraisal in determining incentives in all cases and not considering the number of units being added to the conventional market in determining the possible conventional rent, since these units are already in the community. Neither of these suggestions were adopted.

Section 1965.213(c)(6)

One industry representative asked that the time allowed for a borrower to accept the final incentive offer be lengthened to allow partnerships to confer. While FmHA suggests that partnership decisions concerning the acceptable threshold of prepayment incentives would have been made prior to the preliminary acceptance of the offer, the timeframe has been lengthened to 30 days.

Section 1965.215 and Exhibit E

In response to suggestions that FmHA field offices need better guidance on the prepayment decision-making process, and to suggestions that decision-making be better documented, exhibit E was added. This exhibit contains guidance formerly contained in §§ 1965.213 and 1965.215 of the proposed regulation addressing incentives and acceptance of prepayment, as well as guidance cn determining the ability to prepay. The exhibit suggests the following information used in making prepayment decisions be documented:

(1) descriptions of what projects are used as comparable housing and whether the projects are subsidized;

(2) "Opt-out" provisions if any;

(3) Applicable restrictive-use provisions and the borrower's understanding of the provisions;

(4) Criteria used to determine the effect of the prepayment on the supply of affordable housing;

(5) Criteria for determining the effect of prepayment on minorities; and

(6) The length of time the housing is considered to be not needed if no restrictions are required.

The exhibit provides guidance on the evaluation and documentation necessary to determine when a request to prepay may require the completion of a market analysis. It should be noted that many of the issues discussed in exhibit E are suggested issues to document in determining the ability of a borrower to prepay and not all are mandatory.

In addition, the Housing and Community Development Act of 1992 calls for an increased role by the FmHA National Office in the processing of prepayment offers and acceptance of prepayments. The regulations have been structured to allow for the future establishment of such a role.

In conjunction with the comments to this regulation, several tenant advocates suggested that prepayments of section 8 projects are being too readily accepted when the borrower agrees to accept restrictive-use provisions for the remainder of a 20-year period. FmHA recognizes this issue and has attempted to address the problem by making field office guidance more explicit, as well as by providing specific calculations in the incentive model for project-based

section 8 projects. In addition, with the enactment of the Housing and Community Development Act of 1992, which allows for the use of excess project rents as an additional incentive, and the authority to offer incentives to projects financed between December 21, 1979, and December 14, 1989, such prepayments will likely be drastically reduced.

One tenant advocate pointed out that while the restrictive-use provisions being signed by borrowers with HAP contracts upon prepayment require low- to moderate-income use for 20 years, the section 8 contract funds could run out prior to the expiration of a 20-year period. The depletion of subsidy funds would not change the incentive offer nor the decision to accept prepayment with restrictions, as the length of time for restricted use would remain, and it would be for the borrower to determine how to meet this commitment. As a precaution, the period of restrictive-use will be explicitly communicated to owners and tenants of prepaid section 8 projects.

Section 1965.215(e)

Several comments from tenant advocates urged FmHA to move the decision to accept prepayment to the National Office. It was pointed out that many prepayments were accepted by FmHA Servicing Offices that contained procedural errors in handling, accepted in error or were accepted without inclusion of restrictive-use provisions. It was determined to leave much of the prepayment decision-making in the Servicing Offices where staff has a greater familiarity with the markets. This familiarity is critical in making informed decisions. However, the regulation has been modified to require that the Servicing Office make a recommendation on acceptance to the State Office or other designated office, where final authorization will be required. In addition, the Housing and Community Development Act of 1992 calls for an increased role for the FmHA National Office in the processing of prepayment offers. This increased role should eliminate much of the inconsistency seen in prepayment processing.

Previous Section 1965.215(b) and New Exhibit E

One comment suggested that the Agency publish a list of areas with traditional discriminatory practices to help with determinations required concerning the effect on minorities from prepayment. This is not possible since such areas could include small localities within communities. As a result, the suggestion was not adopted. However, additional guidelines for determining the effect on minorities have been included.

Previous Section 1965.215(c) and New (e)

One comment noted that while the restrictive-use provisions (contained in exhibit A–4(A) and A–4(B)) provide for borrower attempts to sell the project to a nonprofit organization at the expiration of the 20-year period or when the restrictive-use provisions expire, the procedure gave no guidance on how the required sale is to be accomplished. The procedure now specifies that projects will be advertised for sale to nonprofits for a 6 month period in the same manner as the offer of sale to nonprofit borrowers is required for borrowers not agreeing to accept the incentive package offered at the time of election to prepay.

One comment showed an apparent misunderstanding of the restrictive-use provision intending to protect only current tenants until they move. The comment suggested the provision protect those prospective tenants who wish to enter the project. As this was not the intent of the restrictive use provision contained in exhibit A–4(C), no change was made.

One comment suggested that "very-low income" be included in every instance where the term low- and moderate-income is used. This was determined to be unnecessary. The term "low-income" includes very-low-income and, based on the definitions of "restrictive-use provisions" and "protected populations", very-low-income tenants would continue to be protected in prepaid projects with restrictions to the same degree they would have been protected if the loan had not been prepaid. "Very-low income" is only specifically referenced as required by law.

Section 1965.215(d)(1)(i)

One comment noted that the law requires restrictions for a minimum of 20 years if a borrower prepays and is subject to one of the restrictive-use provisions. It was suggested that FmHA should require restrictions for greater than 20 year periods in high need areas. This suggestion was not adopted as the suggestion appeared to be excessive.

Section 1965.215(d)(1)(ii)

A tenant advocate suggested that borrowers should be precluded from offering tenants incentives to move. The Agency suggests it has no legal authority to adopt this restriction. However, as tenants protected by the restrictive-use provisions may not receive LOPEs, it is considered less likely that tenants not facing the imminent loss of their housing would agree to accepting incentives to move.

Section 1965.215(e)

One comment suggests that FmHA offices have agreed to raised rents immediately prior to prepayments in order to make the prepayment feasible while maintaining tenant protections. The Agency contends that rent increase procedures are clear as to the necessary documentation required to show the need for rent increases. Reviews of project rent increases are available to tenants anytime if rents are believed to have been raised inappropriately. In addition, the issue of an improper rent increase could be raised during the tenant comment period to the prepayment request.

Section 1965.215(e)(5)

Several comments suggested that FmHA require lease language informing tenants of the following prepayment related circumstances:

(1) Tenants who move into a project after a prepayment request has been received are advised that the project may be prepaid;

(2) Tenants who move into a project which has been prepaid with restrictions are advised of the nature and expiration date of the restrictions; and

(3) That incomes must be recertified annually.

As circumstances may vary between projects, it was considered inappropriate for FmHA to provide the required language for each case. Suggestions, rather than required language, are provided in the first instance. For the second, language advising tenants of restrictive-use requirements after prepayment is to be copied from the notifications sent to tenants. In the third case, language requiring recertification may be copied from current required lease language. Owners will be required to submit proposed lease language for approval with their prepayment requests before use.

Section 1965.215(e)

Several tenant advocates suggested that all borrowers, including those prepaying with restrictions, provide budgets to prove they can feasibly operate the project with the proposed tenant population. They also suggested that annual income certifications be mandatory for borrowers prepaying with restrictions, rather than at the option of the borrower. They suggested this was necessary to be certain that appropriate

tenants continue to be served. The first suggestion was determined not necessary in the case of borrowers accepting restrictions as the borrower is required to comply with the restrictions whether financially feasible or not. For those borrowers prepaying without restrictions, budgets and conventional unsubsidized rents are to be evaluated by FmHA. We have accepted the suggestion for annual recertifications for those borrowers prepaying with restrictions. The annual recertifications will provide a method for the borrower to both determine that rents could be raised if the borrower wished to do so, and to ensure that protected tenants are appropriately served.

Sections 1965.215(e) and 1965.222

Several tenant advocacy groups reiterated a comment proposed for the interim rule suggesting that FmHA continue to monitor compliance with restrictive-use provisions after the loan is prepaid. Alternative suggestions were that borrowers certify annually to FmHA that they are complying with the restrictive-use provisions. It was determined that the Agency does not have the capacity to monitor compliance after prepayment. Improved guidance is provided in the final rule concerning the information to be provided to tenants and documentation to be submitted to FmHA prior to FmHA accepting a prepayment. The rule also requires FmHA to notify all area advocacy agencies of the prepayment with restrictions and explain to the borrower the implications of the restrictions agreed to. The final rule recommends that the borrower maintain records documenting that units were rented to appropriate tenants and the appropriate rents were charged. The final rule also establishes the FmHA State Office or other designated office as the responsible office for approving all prepayment requests which are accepted, ensuring that appropriate provisions were followed, and requiring the borrower to annually certify to FmHA that units were rented to appropriate tenants at appropriate rents in accordance with the restrictive-use provisions. It was determined that FmHA will not monitor prepaid projects, but will take appropriate action if a violation is brought to our attention. Finally, the alternative suggestion requiring an annual certification from the former borrower to FmHA stating that the operation of the project is in compliance with the restrictive-use provisions has been adopted, along with a requirement that borrowers prepaying subject to restrictive-use provisions will be required to sign a Restrictive-Use Agreement at the time of the prepayment.

Section 1965.215(f)

An industry representative asked for clarification in this section. The language has been modified to state that the letter denying prepayment may revise the original incentive offer if new information documenting the loss the borrower may suffer if not allowed to prepay has been brought to the attention of FmHA.

Tenant advocates stated that FmHA should attempt to keep housing in the program at all costs. It was decided that if a surplus of comparable housing exists at rent levels the project tenants are currently paying, there is no advantage to tenants to keep the housing in the program. Exhibit E was modified to state that if the project requesting prepayment is full profit with rents at unsubsidized conventional market levels, and subsidized projects are needed in the community, an incentive offer should be made reflecting the need for subsidized housing.

It was suggested that prospective tenants, as well as current tenants, must be taken into account when the need for housing is determined. Exhibit E has been clarified to reinforce existing language requiring the determination of need.

Section 1965.216(a)

There were several suggestions that appraisals required prior to a sale to nonprofit organizations and public agencies should be conducted until a potential purchaser is found. It was also suggested that the advance for loan application costs be made prior to the appraisal. The timing of appraisals for nonprofit or public agency sales, as well as several other requirements for appraisals, are mandated by law and cannot be changed. As for nonprofit and public agency advances, the section has been substantially modified to allow advances to nonprofit organizations and public agencies in the form of grants. Such grants would be obtainable at the time the organization or agency obtains a purchase offer or option. Section 1965.217(d) addresses the eligibility requirements and processing of these advances.

Section 1965.216(b)

A tenant advocate suggested that regional and national nonprofit organizations and public agencies be notified when prepayment sale advertising begins to local nonprofits and public agencies so the organizations will be prepared to make an offer. Conversely, an industry organization suggested that borrowers should not be required to advertise their projects to nonprofit organizations and public agencies; rather, nonprofit organizations and public agencies should keep abreast of the status of projects wishing to prepay, as they receive early notification when the prepayment request is made. As the law requires that a bona fide attempt be made to sell the project to nonprofit organizations or public agency for a minimum of 6 months, the provision was not changed.

There was an apparent misunderstanding of the provision that if advertising ceases while a nonprofit or public agency applicant is being evaluated by FmHA and the applicant is not accepted, advertising must be resumed until an additional 6 months' advertising is completed. The comment apparently interpreted the proposed rule to require that advertising must stop during the evaluation period. This is not the intention; if a local nonprofit or public agency is being evaluated for eligibility, advertising may continue to regional and national nonprofit organizations and public agencies and back-up offers accepted, so long as a minimum of 6 months' advertising is completed. This requirement has been clarified in the procedure.

Several comments suggested changes to issues required by law, such as qualifications of local nonprofits to manage projects and identity of interest requirements. The suggested changes could not be made due to the statutory nature of the requirements.

Section 1965.217(e)(5)

An industry representative suggested that the regulation specify deferred maintenance to be completed prior to a transfer only include maintenance identified in previous inspections and not include items which are identified immediately prior to the transfer. The required maintenance has been clarified in the regulation.

Section 1965.217(f)

Several comments dealt with Debt Forgiveness RA (DFRA). One comment suggested sales to nonprofits should be processed even if DFRA is not available at the time of the transfer. Closing a sale without DFRA is not allowed by law if DFRA is needed.

The second comment made by several tenant advocacy groups questioned why FmHA would transfer regular RA out of the project upon transfer to a nonprofit, and use only DFRA in the project. They suggested that since there is only a limited number of DFRA units, it should be utilized more conservatively. The procedure does not specify that regular

RA must be transferred, only that regular RA may be transferred when the National Office determines there is sufficient DFRA to serve all projects which will need DFRA during the fiscal year. Since DFRA may not be used for any purpose but prepayment, it is considered the most expedient method to utilize the maximum amount of RA.

Section 1965.218(b)

There were several comments to this section, each apparently taking different positions based upon different interpretations of the same law. Borrower groups suggested that after any one project has been on the waiting list for 15 months, the borrower should be allowed to prepay. This suggestion was not adopted, since it frequently takes more than 15 months to process a request. If the delay is due to borrower procrastination the borrower could conceivably avoid the intent of the law. Advocacy groups agreed with borrower groups that the 15-month waiting period refers separately to each request to prepay, but proposed that the borrower's interpretation does not allow that each project must have been on the list for at least 15 months during the current period of no budgetary authority. The regulation has not been changed. Each prepayment request is to proceed through the entire prepayment process. If, when the end of the process is reached, or at any time after the borrower rejects the incentive, a period of 15 months expires or has already expired in which there is no budgetary authority for sales to nonprofit organizations, FmHA will accept the prepayment with no restrictions.

Section 1965.223

One comment stated that FmHA employees are accepting prepayments in order to avoid foreclosure; that is, accepting it under conditions which would not be applicable if the account were not a problem account. It was suggested that prepayments should never be accepted from uncooperative borrowers, so that prepayment does not become an incentive to default. Exhibit E reiterates that all prepayments, even those in lieu of foreclosure, must meet all guidelines for acceptance of prepayment with or without restrictions.

One comment suggested that projects sold from FmHA inventory as non-program properties should not contain restrictive-use provisions unless the project is made suitable for retention in the program. It is not intended to place restrictions on a project that is not suitable for low and moderate income use. Only current tenants would need to be protected until suitable housing could be found. Such tenants would be provided with LOPEs. No changes were made to this section.

There have been comments from tenant advocacy groups that borrowers who received loans prior to December 21, 1979, may intentionally default on their loans in order to circumvent the prepayment process and the regulations. Specifically, borrowers who wish to prepay and not be subjected to required restrictive-use provisions may purposely default and pay their loan(s) in full in response to an acceleration of the defaulted loan by FmHA. In order to prevent purposeful circumvention such as this, the regulations were modified to require that any loan made on or before December 21, 1979, paid-in-full in response to an acceleration of the account, would be made subject to restrictive-use provisions if the borrower had initiated a prepayment request on the loan anytime within a year prior to the payment-in-full.

*Appeals*

There were comments to various sections of the proposed rule dealing with recommended changes to the appeals procedure, and the rights of tenants to ask for review of decisions. The appeals procedure applies to all FmHA program areas and therefore no substantive changes were made. In response to comments that providing all tenants the opportunity to appear at borrower prepayment appeal hearings could disrupt the hearings, we have modified the regulation to require that tenants be notified if the borrower appeals a decision, but that only one tenant representative, either a tenant, an attorney representing the tenants, or an interested third party chosen by the tenants, may attend the hearing and present evidence on the tenants' behalf. However, all tenants will be allowed to contribute written comments during the appeal process. We have rejected the suggestion that tenants may ask that the decision to accept prepayment be reviewed. Tenants will be allowed an additional 60-day notice before the prepayment is accepted or their rents are modified. Since concurrence and final acceptance is now required from the State Office or other designated office before a prepayment can be accepted, notification to affected tenants and the request for State Office or other designated office concurrence and acceptance may be sent simultaneously.

*Appraisals*

Comments concerning appraisals will be incorporated into a revision of FmHA Instruction 1922–B. These comments include: (1) Considering the value of tax credits in the appraisal; (2) Completion of appraisals by fee appraisers versus FmHA staff; (3) Appraisal of the housing for its highest and best use as rental housing; (4) Valuation of maintenance reserves in the appraisal; and (5) The appraisal contracting process.

Other comments were concerned with the timing of appraisals, including the completion of required appraisals prior to offering the project for sale to nonprofits. No changes to the regulations were made as several of the timeframes are statutory. Other appraisal timeframes contained in the regulation were considered appropriate.

The regulations are clarified to state that all projects being appraised for equity loans and sales to nonprofit organizations will be considered as unsubsidized conventional multi-family housing. Since the borrower has proposed that unsubsidized conventional housing is the highest and best use of the project and is requesting to prepay the mortgage, the appraisal of the project as unsubsidized conventional housing is appropriate. Additional basis for this position is contained in the Cranston-Gonzalez National Affordable Housing Act which, under prepayment regulations applicable to HUD, specifies that preservation appraisals for both equity loans to current borrowers and sales to priority purchasers will assume conversion of the projects from their subsidized use to unsubsidized conventional use.

*Exhibit 1965–E–1*

One comment suggested additional information be added to the form. The information suggested is already captured on the prepayment report, so no change to the regulation was made.

*Other*

Several editorial suggestions were made for changes throughout the regulation to shorten sentences for clarity, to improve definitions and consistency in wording, or to correct typographical errors. These suggestions have been followed in most cases.

The proposed rule invited comments to several items which are not generally required to be published in the CFR, including guide letters. The guide letters are therefore not published as part of the final rule. At the time the proposed rule was published, the checklist for requesting prepayment was not to be published. The earlier decision has been reconsidered and the checklist is now included as additional guidance to borrowers. Exhibits D and E, which address FmHA evaluation of

information submitted and development of the incentive offer, will be made part of the CFR for informational purposes. However, each are considered administrative processes and internal to the Agency.

*Comments to Corollary Regulations*

Subpart E of Part 1944

One comment concerned the information required to apply for an equity loan to avert prepayment. The issues raised apply to applications for all loans and so will not be addressed in this regulation.

Section 1944.215(e)

Two tenant advocates suggested that all graduation requirements, including reviews of eligibility for graduation, be eliminated. The suggestion could not be adopted, as the existing law still requires graduation of borrowers for projects obligated prior to December 15, 1989. However, no displacement should result since graduation may be requested only if refinancing the project would result in the project serving the same tenant population currently served.

Subpart F of Part 1951

Comments similar to those in the preceding paragraph were received concerning graduation. FmHA's response is the same as in the preceding paragraph.

Subpart N of Part 1951

One comment suggested that borrowers asked to prepay due to receipt of unauthorized assistance, should not be subject to restrictive-use provisions. The provision has been retained. Prepayment would not be required except in extreme circumstances, such as where the borrower is clearly at fault. As restrictive-use provisions upon prepayment are statutory and not FmHA policy, retention of the restrictions is not optional. Several tenant advocates suggested that if the penalty for unauthorized assistance was to require prepayment with restrictions, FmHA should first require the borrower to attempt to sell the project within the program, preferably to a nonprofit organization. The provision for sale within the program has been adopted but broadened to allow the sale to be to any acceptable transferee.

Subparts A and C of Part 1955

Several comments suggested that:

(1) Tenants not be notified when projects are foreclosed;

(2) The 180-day notice period is not needed;

(3) No project with tenants occupying the project should be sold out of FmHA inventory even with restrictions;

(4) Tenants in foreclosed properties should not receive LOPEs nor be "forced" to move; and

(5) RA and interest subsidy should not be canceled for foreclosed projects.

One comment was concerned that negative RA could not be paid in foreclosed projects. Another comment suggested attempts should be made to sell foreclosed projects to nonprofits only.

A third comment apparently assumed all inventory projects sold out of the FmHA program were substandard, rather than recognizing that FmHA may sell a project out of the program if there is no market in a certain area for subsidized housing. In response to the comments, FmHA contends that tenant protections should be at least as strong in an FmHA inventory project as in those not in FmHA inventory. The protections include keeping tenants advised of the ownership status of the project and offering tenants LOPEs if they wished to move elsewhere. In addition, all attempts are made to sell the project as expeditiously as possible within the program, whether to nonprofits or otherwise. If a project is determined to be substandard, all efforts would be made to move tenants to other suitable housing prior to the project being sold. Finally, negative RA would continue to be paid by the project to the tenant through a direct voucher. No modifications were made to the regulation.

Subpart B of Part 1965

A borrower organization asked that "scheduled levels" of accounts be defined. FmHA suggests that the term is sufficiently defined elsewhere in FmHA procedures.

**List of Subjects**

*7 CFR Part 1924*

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

*7 CFR Part 1930*

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

*7 CFR Part 1944*

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing, Farm labor housing, Grant programs—Housing and community development, Migrant labor, Public housing.

*7 CFR Part 1951*

Loan programs—Agriculture, Rent subsidies, Rural areas, Subsidies.

*7 CFR Part 1955*

Foreclosure, Government acquired property, Sale of government acquired property, Surplus government property.

*7 CFR Part 1965*

Administrative practice and procedure, Low and moderate income housing—Rental, Mortgages.

Accordingly, FmHA amends Chapter XVIII, Title 7, Code of Federal Regulations as follows:

## PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

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

### Subpart A—Planning and Performance Construction and Other Development

**Exhibit I to Subpart A [Amended]**

2. In exhibit I of subpart A, section 301–1 is amended by revising the reference from "§ 1944.164 (k), (l) and (m) of subpart D of part 1944 of this chapter" to "§ 1944.164 (l), (m) and (n) of subpart D of part 1944 of this chapter".

## PART 1930—GENERAL

3. The authority citation for part 1930 continues to read as follows:

**Authority:** 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

**Exhibit B to Subpart C [Amended]**

4. In exhibit B of subpart C, paragraph VI C 5 is amended by revising the reference from "§ 1965.90 of subpart B of part 1965 of this chapter" to "subpart E of part 1965 of this chapter", and paragraph VIII C 20 is amended by revising the reference from "§ 1965.90 of subpart B of part 1965 of this chapter" to "§ 1965.215 (e) of subpart E of part 1965 of this chapter."

5. Exhibit E of subpart C is amended by revising the reference in the last sentence of paragraph V. A. 2. from "paragraph V. C. 5." to "paragraph V. D. 5. of this exhibit"; by revising the reference in the last sentence of paragraph XV. B. 1. from "§ 1965.65 (c)(11)" to "§ 1965.65 (c)(12)"; by redesignating current paragraph V. C. as V. D.; by adding new paragraphs II. I., IV. C., V. C., and the words "Form FmHA 1944–27" after the word "Each" in the first sentence of paragraph VI. A.; and by revising newly redesignated paragraphs V. D. 5. b. (3) and V. D. 5. c., and paragraph XV. B. 3. to read as follows:

**Exhibit E to Subpart C—Rental Assistance Program**

* * * * *

II. * * *

I. *Debt Forgiveness RA.* RA allocated to projects purchased by nonprofit corporations and public agencies to avert prepayment in an amount necessary to ensure that the monthly shelter payment made by each low-income family or person residing in the housing does not exceed the maximum shelter payment calculated in accordance with paragraph IV A 2 c of exhibit B of this subpart. Debt Forgiveness RA units come from a separate line item appropriation than regular RA.

* * * * *

IV. * * *

C. *Special Allocations related to Prepayment Actions.* Tenants that are displaced as a result of a prepayment action may receive a Letter of Priority Entitlement (LOPE) to move into another FmHA project. If the tenant was receiving RA at the prepaying project, the RA may be transferred to the FmHA project in the same state to which the tenant moves, as specified in § 1965.215 (e)(4)(iv) of subpart E to part 1965. If the tenant moves to another FmHA project in another state, RA will be transferred and assigned as described in paragraph XV B 3 b of this exhibit.

* * * * *

V. * * *

C. *Debt Forgiveness RA.* Any project sold to a nonprofit corporation or public agency to avert prepayment will receive the number of debt forgiveness RA units necessary to provide RA to all current tenants who will be rent overburdened as a result of the sale.

D. * * *

5. * * *

b. * * *

(3) Third two digits—will always be 00.

c. The AMAS system will track RA and debt forgiveness RA agreements by number.

* * * * *

XV. * * *

B. * * *

3. *Suspension and transfer after a liquidation or prepayment.*

a. When a project with RA prepays or is liquidated through sale outside of the program, the RA will be suspended and transferred to another FmHA financed project in accordance with paragraph XV. B. 3. b. of this exhibit, if tenants receiving RA will be displaced. If no tenants will be displaced, the RA may be transferred to another project in accordance with paragraph XV A 2 of this exhibit.

b. When a tenant receiving RA will be displaced due to prepayment or liquidiation, the RA the tenant was receiving will be transferred to any other FmHA project the tenant chooses to move to, regardless of location. If the tenant is unable to immediately occupy a new FmHA project, the RA will be suspended and transferred when the tenant moves into the new project. Once the tenant has moved into the new FmHA project and the corresponding RA unit is transferred to the project, the tenant will be given first priority for the unit of RA, regardless of other priorities for the RA, if all of the following conditions are met:

(1) The borrower is eligible to receive and administer RA;

(2) The tenant is eligible to occupy the project and receive RA;

(3) The tenant has taken all of the following steps to ensure eligibility to receive priority for the unit of RA:

(i) The tenant has been placed on at least one waiting list for an FmHA project with a Letter of Priority Entitlement; and

(ii) The tenant moved to the project as soon as the tenant's name was reached on the waiting list, even if it means temporarily occupying an ineligible unit.

(4) The RA has not been previously transferred as a result of the tenant's current displacement.

c. When a tenant receiving RA is displaced from an FmHA project due to prepayment or liquidation and moves to another FmHA project in another State:

(1) The RA unit the tenant was receiving will be suspended and transferred to another project within the same state in accordance with paragraph XV A 2 of this exhibit; and

(2) The project to which the tenant moves will be allocated a unit of RA by the National Office if no RA is available within the State and the project and the tenant meet the criteria outlined in paragraph XV B 3 b of this exhibit.

d. If the project is transferred to a nonprofit corporation or public body to avert prepayment, RA on the project may be suspended and transferred to another project within the state, and all RA needs for the project met with debt forgiveness RA.

e. Procedures for transferring RA and modifying RA agreements outlined in paragraphs V D and XV A 2 of this exhibit will be followed, but the receiving project borrower need not submit Form FmHA 1944–25 if the RA was received as a result of the occupancy of a displaced tenant.

* * * * *

## PART 1944—HOUSING

6. The authority citation for part 1944 continues to read as follows:

**Authority:** 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

### Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

7. Section 1944.158 is amended by adding paragraph (n) to read as follows:

**§ 1944.158 Loan and grant purposes.**

* * * * *

(n) To make advances in accordance with § 1965.217 (d) of subpart E of part 1965 of this chapter to nonprofit corporations and public agencies to avert prepayment of the loan.

**§ 1944.164 [Amended]**

8. Section 1944.164 (n) is amended in the heading by adding the word "American" after the word "to".

9. Section 1944.164 is amended by revising the last sentence of paragraph (o) and paragraph (p) to read as follows:

**§ 1944.164 Limitations and conditions.**

* * * * *

(o) *Refinancing LH loans.* * * * The provisions of subpart E of part 1965 of this chapter must be followed before the State Director or other designated official can approve or accept prepayment or refinancing of the FmHA loan.

(p) *Restrictive-use provisions for LH loans.* The acceptance of a farm labor housing loan will make the borrower subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter.

* * * * *

10. In § 1944.171(d), the table is amended by revising the paragraph at the end to read as follows:

**§ 1944.171 Preparation of completed loan and/or grant docket.**

* * * * *

(d) * * *

When applicable, include copy of lease or occupancy agreement to be used, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage(s). For subsequent loans made in conjunction with transfers to nonprofit corporations or public agencies to avert prepayment, follow the additional directions in § 1965.65(f) of subpart B of part 1965 of this chapter. For advances made to nonprofit corporations or public agencies to avert prepayment, follow the directions in § 1965.217 of subpart E of part 1965 of this chapter.

* * * * *

11. Section 1944.176 is amended by removing paragraph(d)(3), by redesignating paragraphs (d) (4) through (6) as (d) (3) through (5) respectively, and by revising paragraph (d)(2) to read as follows:

**§ 1944.176 Loan and/or grant closing.**

* * * * *

(d) * * *

(2) For all LH loans, the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter will be included in the mortgage.

* * * * *

## Subpart E—Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

12. Section 1944.205 is amended by revising the reference in the definition of "Consumer cooperative", paragraph 3, from "§ 1944.215 (i)" to "§ 1944.215 (h)"; by revising the reference in the definition of "Limited equity" from "subpart E to this part 1944" to "§ 1944.215 (h) and in exhibit H of this subpart"; and by adding a new definition in alphabetical order to read as follows:

**§ 1944.205 Definitions.**

* * * * *

*Loans to build or acquire new units.* Any loan made on or after December 15, 1989, to build or acquire new RRH units. Loans under this category may not be prepaid for the term of the mortgage.

* * * * *

13. Section 1944.211 is amended by redesignating paragraphs (a)(11) through (a)(13) as paragraphs (a)(12) through (a)(14), respectively, by revising the introductory text of paragraph (a)(10)(ii) and paragraph (a)(10)(ii)(B), and by adding a new paragraph (a)(11) to read as follows:

**§ 1944.211 Eligibility requirements.**

(a) * * *

(10) * * *

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(10)(i) of this section, with the exception of (a)(10(i)(C) of this section:

* * * * *

(B) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraph (a)(10)(ii)(A) of this section.

(11) In the case of transfers of projects to nonprofit corporations which receive subsequent loans to avert prepayment, meet the requirements of § 1965.216 (c) of subpart E of part 1965 of this chapter.

* * * * *

14. Section 1944.212 is amended by revising the section heading and by adding a new paragraph (q) to read as follows:

**§ 1944.212 Loan and grant purposes.**

* * * * *

(q) Grants for advances to nonprofit corporations or public agencies for costs to develop an application package or close a loan to purchase a project to avert prepayment. Such grants shall not exceed $10,000 and shall be administered in accordance with § 1965.217 (d) of subpart E of part 1965 of this chapter.

15. In § 1944.213 paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(4) and (b)(5), respectively; paragraph (b)(1) is amended by adding a sentence at the end of the paragraph; and a new paragraph (b)(3) is added to read as follows:

**§ 1944.213 Limitations.**

(b) * * *

(1) * * * Grants made in accordance with § 1944.212 (q) of this subpart are not included in the preceding limitations.

* * * * *

(3) For equity loans to avert prepayment, the amount of the RRH equity loan will be limited to no more than the difference between 90 percent of current value of the project as appraised as conventional unsubsidized housing and current unpaid balance(s).

* * * * *

16. Section 1944.215 is amended by revising the reference in paragraph (b)(2) from "§ 1944.212 (o)" to "§ 1944.212 (p)"; by revising the title of Form FmHA 1944–7 in paragraph (c)(5)(ii) from "Interest Credit and Rental Assistance Agreement" to "Multiple Family Housing Interest Credit and Rental Assistance Agreement"; by revising the reference in paragraph (r)(3) from "paragraph (s)(6) of this section" to "paragraph (r)(6) of this section"; by revising paragraphs (d), (j), the introductory text of paragraph (n) and paragraph (r)(2); and by adding quotes around the words "What is Cooperative Housing?" in paragraph (h)(1), the words "which is available in any FmHA office" after the reference to "FmHA Instruction 1922–B" in paragraph (r)(3), and a new paragraph (n)(3) to read as follows:

**§ 1944.215 Special conditions.**

* * * * *

(d) *Refinancing Loans.* Each borrower, except those borrower(s) whose loans to build or acquire new units were made pursuant to contracts entered into on or after December 15, 1989, must agree to refinance the unpaid balance of the loan when requested by the Agency. The rates and terms of the refinanced loan must be considered reasonable by the Agency to enable the borrower to offer the units to eligible tenants and members at rates within their payment ability. The refinancing of a loan must comply with the restrictions indicated in § 1944.236(b)(5) of this subpart, subpart F of part 1951, and subpart E of part 1965 of this chapter.

* * * * *

(j) *Nondiscrimination in use and occupancy.* The borrower will not discriminate or permit discrimination by any agent, lessee or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital or familial status, mental or physical handicap (tenants must possess the capacity to enter into a legal contract), or national origin, in accordance with subpart E of part 1901 of this chapter.

* * * * *

(n) *Establishing profit base on initial investment.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. For equity loans to avert prepayment, the rate of return and equity position may be set in accordance with § 1965.213 of subpart E of part 1965 of this chapter. This amount will be reflected in the loan agreement or loan resolution and will not be changed once it is determined. The initial investment may exceed the required 3 percent in § 1944.213(b)(2) of this subpart and may include the following:

* * * * *

(3) Borrowers receiving incentives to avert prepayment may have the amount of borrower equity redefined to include the difference between the value used in determining the incentives and the balance of all loans, including the equity loan, if any. Redefined equity may be received only as a part of an incentive offer developed under § 1965.213 of subpart E of part 1965 of this chapter.

* * * * *

(r) * * *

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital or familial status or physical or mental handicap, thereby opening up nonsegregated housing opportunities for minorities.

* * * * *

**§ 1944.224 [Amended]**

17. Section 1944.224 is amended in paragraph (a)(2)(i) by revising the reference in the first sentence from "§ 1944.215(o) of this subpart" to "§ 1944.215(r) of this subpart."

**§ 1944.235 [Amended]**

18. Section 1944.235 is amended by revising the reference in paragraph (a)(1) from "§ 1944.215(f) of this subpart" to "§ 1944.215(e) of this subpart."

19. Section 1944.236 is amended by removing paragraph (b)(5); by redesignating paragraph (b)(6) as (b)(5); by revising newly redesignated paragraph (b)(5); and by adding new paragraphs (b)(6) and (b)(7) to read as follows:

**§ 1944.236 Loan closing.**

* * * * *

(b) * * *

(5) For all section 515 RRH and RCH loans used to build or acquire new units made pursuant to a contract entered into on or after December 15, 1989, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of title V of the Housing Act of 1949, and FmHA regulations then in effect during the full term of this mortgage. No eligible person occupying the housing will be required to vacate nor any eligible person denied occupancy for housing prior to the close of such period because of a prohibited change in the use of the housing. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government.

(6) For the following categories of loans, the language set forth in exhibit A–1 or A–2, as appropriate, of subpart E of part 1965 of this chapter will be included in the mortgage instead of the language contained in paragraph (b)(5) of this section:

(i) Equity loans made to avert prepayment.

(ii) Subsequent loans to nonprofit organizations or public agencies made in conjunction with transfers to avert prepayment.

(iii) Subsequent loans for any purpose other than to build or acquire new units.

(7) Additional guidance on closing transfers and loans to nonprofit corporations and public agencies to avert prepayment is contained in § 1965.217(e) of subpart E of part 1965 of this chapter.

* * * * *

20. Section 1944.237 is amended by revising paragraphs (a) and (e), and by adding paragraphs (f) and (g) to read as follows:

**§ 1944.237 Subsequent loans.**

(a) A subsequent RRH loan is made to an applicant/borrower to complete, improve, repair, and/or make modifications to the project initially financed by FmHA, or for equity and/or other purposes when authorized by the provisions of subpart E of part 1965 of this chapter, to avert prepayment.

* * * * *

(e) Subsequent loans, other than those made to a nonprofit corporation or public agency to avert prepayment, will be subject to the restrictive-use provisions contained in exhibit A–1 of subpart E of part 1965 of this chapter. Subsequent loans made to nonprofit organizations or public agencies to avert prepayment will be subject to the restrictive-use provisions contained in exhibit A–2 of subpart E of part 1965 of this chapter. The required restrictive-use language for subsequent loans shall be appended to the mortgage referencing all notes for the applicable term, beginning on loan closing. The advice of OGC shall be obtained to carry out the requirements of this paragraph.

(f) For additional requirements in closing quality loans to avert prepayment, see exhibit A–11 of this subpart.

(g) For additional requirements in closing subsequent loans to nonprofit corporations and public agencies made in conjunction with transfers to avert prepayment, see § 1965.65(f) of subpart B of part 1965 of this chapter.

**§ 1944.238 [Amended]**

21. Section 1944.238 is amended by adding the words "made to build or acquire new units" after the word "loan," and by adding the words "regardless of the fact the borrower has received previous RRH loans on the project" after the date "December 15, 1989," in the first sentence.

22. A new exhibit A–11 to subpart E is added to read as follows:

**Exhibit A–11—Processing Guidelines for Loans for Equity To Avert Prepayment**

To apply for an equity loan to avert prepayment, the borrower should submit the following items in accordance with exhibit A–6 of this subpart and this exhibit:

1. Form SF–424.2 with a narrative discussion of the borrower's equity loan request,

2. Current Financial Statement,

3. Proposed budget showing anticipated rents to cover revised financing package, including updated figures on required reserve contributions and return on investment (if any),

4. Data on current tenants' income, rents and RA, and incomes of those on the waiting list to show that new rents will not displace or prevent occupancy by eligible tenants, unless sufficient RA is made available.

## Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

23. Section 1944.553 is amended by adding a new paragraph (h) to read as follows:

**§ 1944.553 Exceptions.**

* * * * *

(h) *Displacement or other effects as a result of prepayment.* This subpart does not apply to tenant displacement or other effects due to prepayment of the FmHA loan. Opportunities for tenant input into the prepayment process are outlined in subpart E of part 1965 of this chapter.

## PART 1951—SERVICING AND COLLECTIONS

24. The authority citation for part 1951 continues to read as follows:

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

## Subpart F—Analyzing Credit Needs and Graduation of Borrowers

**§ 1951.251 [Amended]**

25. Section 1951.251 is amended in the second sentence by adding the words "made to build or acquire new units" after the first occurrence of the word "loans."

26. Section 1951.252(d) is amended by revising the last sentence to read as follows:

**§ 1951.252 Definitions.**

* * * * *

(d) * * * In the case of multi-family housing (MFH) loans, "reasonable rates and terms" would be considered to mean financing that would allow the units to be offered to eligible tenants at rates consistent with other FmHA multi-family housing.

* * * * *

27. Section 1951.261 is amended by redesignating paragraph (d)(4) as (d)(5); by adding a new paragraph (d)(4); and by revising paragraph (d)(3), the title of Form FmHA 1930–7 in paragraph (e)(2)(iii) from "Statement of Budget and Cash Flow (Excluding Depreciation)" to "Multiple Family Housing Budget", and the reference in paragraph (e)(5) from "paragraph (d)(4) of this section" to "paragraph (d)(5) of this section" to read as follows:

**§ 1951.261 Graduation of FmHA borrowers to other sources of credit.**

* * * * *

(d) * * *

(3) A borrower's ability to accept other credit may be limited by factors over which the borrower has little or no

control, such as a referendum required by a public body borrower. However, the existence of such factors will not preclude FmHA from requesting a borrower to graduate nor the borrower from making a diligent effort to seek other credit should such a request be made. The prepayment restrictions contained in section 502(c)(1) of title V of the Housing Act of 1949, as amended, for RRH, RCH and LH loans are factors which must be considered. Those prepayment restrictions are found in exhibit A–1 of subpart E of part 1965 of this chapter for LH loans and § 1944.238 of subpart E of part 1944 of this chapter for RRH and RCH loans. Tenant notification requirements and restrictive-use provisions, as outlined in § 1965.215 of subpart E of part 1965 of this chapter must also be addressed.

(4) MFH borrowers whose projects have rental assistance (RA) which is being utilized by eligible tenants will not be required to graduate.

* * * * *

28. Section 1951.264 is revised to read as follows:

**§ 1951.264 Special requirements for multifamily housing borrowers.**

All requirements of subpart E of part 1965 of this chapter must be met prior to graduation and acceptance of the full payment from a multifamily housing borrower. The State Director will provide the National Office with a report as described in §§ 1965.215(e)(1) and 1965.219 of subpart E of part 1965 of this chapter. The original report and documentation for the report will be retained indefinitely in the State Office.

## Subpart N—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Multiple Family Housing

29. Section 1951.651 is revised to read as follows:

**§ 1951.651 Purpose.**

This subpart prescribes the policies and procedures for servicing multiple family housing (MFH) loans and/or grants made by Farmers Home Administration (FmHA) when it is determined that the borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy granted, any other direct financial assistance, or was not made subject to restrictive-use provisions required by law and/or regulation. As used in this subpart, MFH loans and grants are section 515 rural rental housing (RRH) and rural cooperative housing (RCH) loans and sections 514 and 516 labor housing (LH) loans and grants.

30. Section 1951.652(g) is amended by removing the period at the end of the paragraph and inserting in its place the following words:

**§ 1951.652 Definitions.**

* * * * *

(g) *Recipient.* * * * or was not made subject to restrictive-use provisions required by law and/or regulation.

* * * * *

31. Section 1951.653 is revised to read as follows:

**§ 1951.653 Policy.**

When unauthorized assistance has been received, an effort must be made to collect the sum which is determined to be unauthorized from the recipient, regardless of amount, unless any applicable statute of limitations has expired.

32. Section 1951.654 is amended by adding a new paragraph (e) to read as follows:

**§ 1951.654 Categories of unauthorized assistance.**

* * * * *

(e) The recipient was not subjected to obligations required by the assistance, such as restrictive-use provisions, at the time the assistance was provided.

33. Section 1951.656(e) is amended by removing the period at the end of the paragraph and inserting in its place the following words:

**§ 1951.656 Initial determination that unauthorized assistance was received.**

* * * * *

(e) * * * or which was caused by omission from the instrument of language required by applicable regulation.

34. Section 1951.658 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 1951.658 Decision on servicing actions.**

* * * * *

(a) *Payment in full.* If the recipient agrees with FmHA's determination or will pay in a lump sum, the District Director may allow a reasonable period of time (usually not to exceed 90 days) for the recipient to arrange for repayment. The amount due will be the amount stated in the letter as shown in exhibit A of this subpart (available in any FmHA office). The requirements of subpart E of part 1965 will be followed with appropriate modifications for prepayments under this subpart. If the loan was subject to restrictive-use provisions prior to the request for payment in full, the project will remain subject to restrictive-use provisions. Wherever feasible, appropriate, or necessary to protect tenants and the low- and moderate-income population of the community, all attempts to encourage the borrower to sell the project to an acceptable transferee will be made before the prepayment is accepted. All tenant notifications and restrictive-use provisions, when applicable, must be followed when prepayment of all debt on an MFH project is demanded. The District Director will remit collections as follows:

* * * * *

35. In § 1951.661, paragraph (a)(1)(i) is amended by removing the period at the end of the paragraph and inserting in its place a semicolon, and by adding the following words:

**§ 1951.661 Servicing options in lieu of liquidation or legal action to collect.**

* * * * *

(a) * * *

(1) * * *

(i) *Correction of problem.* * * * or where a restrictive-use provision was omitted from a loan document, the provision will be inserted.

* * * * *

36. Section 1951.668 is amended by adding a new paragraph (c) to read as follows:

**§ 1951.668 Servicing unauthorized assistance accounts.**

* * * * *

(c) *Collection of unauthorized assistance.* Collection of unauthorized assistance will be made in accordance with the appropriate sections of subpart K of part 1951 of this chapter. If full prepayment of an MFH loan is required, the prepayment will be accepted in accordance with the requirements of subpart E of part 1965 of this chapter, and appropriate restrictive-use provisions, if applicable, will remain in the deeds of release.

## PART 1955—PROPERTY MANAGEMENT

37. The authority citation for part 1955 continues to read as follows:

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

## Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

38. Section 1955.10 is amended by adding 4 sentences to the end of paragraph (h)(6) to read as follows:

**§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.**

* * * * *

(h) * * *

(6) * * * Tenants will be informed of the pending liquidation action and the possible consequences of the action. FmHA Guide Letters 1965–E–2, 1965–E–3, and 1965–E–5 (available in any FmHA office) may be used to inform tenants, but should be modified to reflect the specific action and circumstances. If the project is to be removed from the FmHA program, a minimum of 180 days' notice to the tenants is required. Letters of Priority Entitlement must be made available to any tenants that will be displaced as required by § 1965.215(e)(4) of subpart E of part 1965 of this chapter.

* * * * *

39. Section 1955.15 is amended by removing the phrase "either § 1965.25(d) or § 1965.26(c)(2)" in the first sentence of paragraph (d)(2)(iv)(D) and inserting in its place, the reference "§ 1965.26"; by redesignating paragraphs (f)(2) through (f)(6) as paragraphs (f)(3) through (f)(7), respectively; by revising the references in the first and second sentences of paragraph (f)(6) from "paragraph (f)(6)(ii) of this section" to "paragraph (f)(7)(ii) of this section"; by revising the reference in the last sentence of the introductory text of paragraph (f)(7) from "paragraph (f)(5) of this section" to "paragraph (f)(6) of this section"; by adding new paragraphs (d)(2)(v) and (f)(2); and by revising the first sentence of the introductory text of paragraph (d)(2) and the last sentence of paragraph (d)(3)(ii)(C) to read as follows:

**§ 1955.15 Foreclosure by the Government of loans secured by real estate.**

* * * * *

(d) * * *

(2) *Acceleration of account.* Subject to paragraphs (d)(2)(i), (d)(2)(ii), and (d)(2)(iii) of this section, the account will be accelerated using a notice substantially similar to exhibits B, C, D, or E of this subpart, or for multi-family housing, FmHA Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA Office), as appropriate, to be signed by the official who approved the foreclosure. * * *

* * * * *

(v) For MFH loans, the acceleration notice will advise the borrower of all applicable prepayment requirements, in accordance with subpart E of part 1965 of this chapter. The requirements include the application of restrictive-use provisions to loans made on or after December 21, 1979, prepaid in response to acceleration notices and all tenant and agency notifications. The acceleration notice will also remind borrowers that rent levels cannot be raised during the acceleration without FmHA approval, even after subsidies are canceled or suspended. Tenants are to be notified of the status of the project and of possible consequences of these actions. FmHA Form Letters 1965–E–2, 1965–E–3 and 1965–E–5 may be used as guides, but modified appropriately. If the borrower wishes to prepay the project in response to the acceleration and FmHA makes a determination that the housing is no longer needed, a minimum of 180 days' notice to tenants is required before the project can be removed from the FmHA program. Letters of Priority Entitlement must be made available in accordance with § 1965.215(e)(4) or subpart E of part 1965 of this chapter.

* * * * *

(3) * * *

(ii) * * *

(c) * * * In the interim, the tenants will continue rental payments in accordance with their leases, and all rental rates and lease renewals and provisions will be continued as if acceleration had not taken place.

* * * * *

(f) * * *

(2) *Restrictive-use provisions for MFH loans.* For MFH loans, the advertisement will state the restrictive-use provisions which will be included in any deed used to transfer title.

* * * * *

40. Section 1955.18 is amended by revising the reference in paragraph (e)(2)(ii) from "§ 1955.15(f)(6)(ii) of this subpart" to "§ 1955.15(f)(7)(ii) of this subpart", and by adding paragraph (l) to read as follows:

**§ 1955.18 Actions required after acquisition of property.**

* * * * *

(1) *Effect of acquisition on tenants in multi-family projects.*

(i) After FmHA acquires title to the project, tenant leases and renewals will be continued and managed in accordance with the provisions of subpart B of part 1930 of this chapter.

(ii) If the project is subsequently sold to a purchaser not using FmHA financing, but is considered needed for affordable housing purposes, restrictive-use provisions will be inserted in the deed. The purchaser will be expected to operate the project in accordance with the applicable provisions of subpart B of part 1930 and subpart E of part 1965 of this chapter. FmHA Guide Letter 1965–E–5 will be required to remain posted at the project.

## Subpart C—Disposal of Inventory Property

41. Section 1955.113 is amended by adding two sentences to the end of the introductory text to read as follows:

**§ 1955.113 Price (housing).**

* * * Market value for multi-family housing projects will be determined through an appraisal conducted in accordance with subpart B to part 1922 of this chapter. Multi-family housing appraisals conducted shall reflect the impact of any restrictive-use provisions attached to the project as part of the credit sale.

* * * * *

42. Section 1955.114 is amended by revising the word "times" to "by" in paragraph (a)(3)(ii), and by revising paragraph (b) to read as follows:

**§ 1955.114 Sales steps for program property (housing).**

* * * * *

(b) *Multiple family housing.* The sale price will be established in accordance with § 1955.113 of this subpart. Notification of known interested prospective offerors and advertising should be handled as set forth in § 1955.146 of this subpart. The sale information will include a sale price, any restrictive-use provisions the project will be subject to and made part of the title, a date/time/location when offers will be drawn, and require all offerors to submit an application package comparable to that required by the respective loan program, which will be reviewed by the State Director or designee. The sale/time/location will be established by the District Director and will allow adequate time for advertising and review of applications to determine eligibility in accordance with MFH program requirements. Offerors whose applications are rejected by FmHA will be notified in writing by the approval official, and for program applicants, given appeal rights in accordance with subpart B of part 1900 of this chapter. If an application is rejected, the sale will continue regardless of whether the rejected applicant appeals the adverse decision. Property will not be held pending the outcome of an appeal. An offeror may withdraw an offer prior to the sale date, but not on the sale date. All offers from applicants determined eligible for the type loan being offered will be considered. The District Director, or delegate, and one other FmHA employee will conduct the drawing at which time the public may be present. Offers will be placed in a receptacle and drawn sequentially. Drawn offers will be numbered and

those drawn after the first drawn will be held as back-up offers, unless the offeror has indicated that the offer may not be held as back-up. Award will be made to the first offer drawn provided the offer is acceptable as to the terms and conditions set forth in the sale notice. The successful offeror will be notified immediately in writing by the approval official, return receipt requested, that the successful offeror's offer has been accepted even if the successful offeror was present at the sale. The remaining offerors will each be notified by letter, return receipt requested, that their offer was not successful, but will be held as a back-up offer. The selection of the offeror was by lot and is therefore not appealable. If an unsuccessful offeror was not present at the sale and requests the name of the successful offeror, the name may be released. If the MFH property has been listed with real estate brokers after receiving authorization from the Assistant Administrator, Housing, Form FmHA 1955–40, or another appropriate form designated for MFH property, will be used and the property sold to the first eligible program applicant. Any other method of sale must receive prior written authorization from the Assistant Administrator, Housing. Cash sales of program property will remain subject to restrictive-use provisions determined needed and included in the advertisement. The deed will contain the applicable restrictive-use provisions. Tenants and prospective tenants will receive the applicable protections for the specific restrictive-use provision contained in subpart E of part 1965 of this chapter.

* * * * *

43. Section 1955.115 is amended by adding a sentence to the end of paragraph (b) to read as follows:

**§ 1955.115 Sales steps for nonprogram (NP) property (housing).**

* * * * *

(b) * * * If the housing is sold out of the FmHA program as NP property, the closing of the sale may not take place until tenants have received all notifications and benefits afforded to tenants in prepaying projects in accordance with subpart E of part 1965 of this chapter.

* * * * *

44. Section 1955.117 is amended by revising the last sentence of paragraph (b) to read as follows:

**§ 1955.117 Processing credit sales on program terms (housing).**

* * * * *

(b) * * * All credit sales of RRH, RCH, and LH properties will be subject to prepayment and restrictive-use provisions specified by the respective program requirements.

* * * * *

45. Section 1955.118 is amended by revising the second sentence of paragraph (b)(7) to read as follows:

**§ 1955.118 Processing cash sales or credit sales on NP terms (housing).**

* * * * *

(b) * * *

(7) * * * On the promissory note and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-use provisions on MFH projects, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted.* * *

* * * * *

46. Section 1955.146 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding new paragraph (c) to read as follows:

**§ 1955.146 Advertising.**

* * * * *

(c) *MFH restrictive-use provisions.* Advertisements for multi-family housing projects will advise prospective purchasers of any restrictive-use requirements that will be attached to the project and added to the title of the property.

* * * * *

## PART 1965—REAL PROPERTY

47. The authority citation for part 1965 continues to read as follows:

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

### Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-only Cases

**§ 1965.11 [Amended]**

48. Section 1965.11 is amended by revising the reference in paragraph (c)(2)(ii)(A) from "§ 1955.15(f) (5) and (6) of Subpart A of Part 1955 of this chapter" to "§ 1955.15(f) (6) and (7) of subpart A of part 1955 of this chapter."

### Subpart B—Security Servicing for Multiple Housing Loans

**§ 1965.55 [Amended]**

49. Section 1965.55 (a)(7) is amended by revising the reference from "§ 1965.90 of this subpart" to "Subpart E 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)(13) and (f)(14) as paragraphs (f)(14) 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(n) 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), (b)(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 introductory text of paragraph (f)(7), paragraph (f)(8), and the last sentence (in parenthesis) of paragraph (f)(12) to read as follows:

**§ 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;

(ii) All real estate and personal property taxes owned by the project are current;

(iii) All FmHA loan payments on the project are current;

(iv) The reserve account is at the authorized level at the time of the transfer;

(v) The State Director receives National Office authorization to proceed, if the preceding requirements cannot be met and it can be demonstrated that no other alternative, including liquidation, would be in the best interests of FmHA and the tenants; and

(vi) When 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 organizational 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 substitution of 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 assign partnership 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 taken 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;

(vii) 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)(vi) of this section will apply.

(4) No payment will be received by the transferor 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 transferor is applied in total 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 owned by the borrower that are not current, if the FmHA loans against the project being purchased are assumed in full and all prior liens paid in full.

* * * * *

(c) * * *

(1) 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 transferor's project operating accounts, reserve account, any tenant security deposits, any balance remaining in the transferor'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 transferor 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 transferor 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 transferor.

* * *

* * * * *

(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.

* * * * *

(d) * * *

(7) Transfers to ineligible applicants of projects subject to restrictive-use provisions will continue to retain the applicable restrictive-use provisions and cause the project to be operated in conformance with FmHA instructions. If it is determined by FmHA that the housing is no longer needed to house eligible tenants in accordance with the provisions of subpart E of this part, the restrictive-use provisions may be released.

* * * * *

(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 MFH 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 transferor or transferee under the conditions later specified in this paragraph when the total debt is being assumed and the FmHA designated MFH 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 prepared according to the requirements of FmHA Instruction 1922–B (available in any FmHA office) when the current appraisal is over 1 year old, or when the State Director determines a new appraisal report is needed. An independent appraisal may NOT be accepted from the transferor or transferee for the initial appraisal required of FmHA under provisions of subpart E of this part. The conditions under which the State Director may accept an independent appraisal from the transferor or transferee in lieu of an FmHA prepared appraisal are:

* * * * *

(7) The following paragraph is to be inserted in Form FmHA 1965–9 whenever 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 §§ 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 transferor 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 Application for Occupancy, Lease, and Occupancy Rules and Regulations in accordance with exhibit B of subpart C of part 1930 of this chapter.

(v) Option or purchase agreement,

(vi) Proposed budget showing anticipated rents with updated figures on required reserve contributions,

(vii) 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) If needed, a request for initial operating funds and a detailed breakdown of expenses anticipated to be paid from the funds, and

(xi) District Office comments and recommendations and the State Office evaluation.

* * * * *

51. Section 1965.68 is amended by redesignating paragraph (c)(8) as paragraph (c)(9); by adding a new paragraph (c)(8); 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:

**§ 1965.68 Consolidation.**

(c) * * *

(7) For consolidation of loan agreements/resolutions of loans in 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 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 consolidation is effective.

(8) For consolidation of loan agreements/resolutions of loans for which a loan to build or acquire new units was made on or after December 15, 1989, the consolidated loan may never be prepaid.

* * * * *

52. In § 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)(2) is amended by adding the word "or" to the end; and paragraph (d)(8) is revised to read as follows:

**§ 1965.70 Reamortization.**

* * * * *

(b) * * *

(3) 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) * * *

(8) 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 amortization agreement is effective.

* * * * *

**§ 1965.77 [Amended]**

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."

**§ 1965.89 [Amended]**

54. In § 1965.89, the introductory text of paragraph (c) is amended by revising the reference "Exhibit E of this subpart" to "Subpart E of this part", paragraph (c)(1) is amended by revising the reference "exhibit E of this subpart" to "subpart E 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:

**§ 1965.90 Payment in full.**

(a) *Prepayment of multi-family housing loans.* Subpart E 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 (a)(3) of subpart A of part 1806 of this chapter (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.

**§ 1965.92 [Amended]**

56. Section 1965.92 is amended by revising the references of "exhibit D" in the third sentence and "exhibit B" in the last sentence to read "exhibit A," and by adding the phrase "within 30 days of the servicing action" to the end of the last sentence of the paragraph.

**§ 1965.100 [Amended]**

57. Section 1965.100 is amended in the first sentence to revise "collection of information" to read "reporting and recordkeeping", to add "contained" after "requirements". The second sentence is amended by revising "5 minutes" to "10 minutes" and ".60 hours" to "1.67 hours".

**Exhibits A, B, C, E, E–1, E–2, E–3, E–4 [Removed]**

58. Exhibits A, B, C, E, E–1, E–2, E–3 and E–4, of subpart B to part 1965 are removed.

59. Subpart E of part 1965 is added to read as follows:

**Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans**

Sec.
1965.201 General.
1965.202 Definitions.
1965.203 Nonprofit organization and public agency interest lists.
1965.204 Processing prepayment requests and related rent increases.
1965.205 Borrower request to prepay.
1965.206 Review of borrower prepayment request by Servicing Office.
1965.207 Prohibition on prepayment for loans made on or after December 15, 1989, to build or acquire new units.
1965.208 Restrictive-use provisions related to LH projects with grants.
1965.209 Restrictive-use provisions after prepayment.
1965.210 Loans approved prior to December 14, 1989—FmHA actions when processing prepayment requests.
1965.211 Evaluation of the borrower's ability to prepay the loan.
1965.212 Appraisals.
1965.213 Offer of incentives to borrowers.
1965.214 Offering and processing of incentives.
1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment.
1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.
1965.217 Processing applications for transfers to nonprofit corporations or public agencies.
1965.218 Accepting prepayment when nonprofit organizations do not apply to purchase or funds are not available.
1965.219 FmHA processing of prepayment.
1965.220–1965.221 [Reserved]
1965.222 Violations of restrictive-use provisions.
1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.
1965.224 Prepayment of loans caused by advance payments on the account.
1965.225–1965.248 [Reserved]
1965.249 Exception authority.
1965.250 OMB control number.

Exhibits to Subpart E

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 B Report on Prepayment [Reserved]
Exhibit C Checklist for Requesting Prepayment [Reserved]
Exhibit D Methodology for Determining Prepayment Incentives [Reserved]
Exhibit D–1 Worksheet for Incentive Calculations [Reserved]
Exhibit E Administrative Guidance for Making Prepayment Determinations [Reserved]
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)
Exhibit G–3 Restrictive-Use Agreement (To be used with paragraph (B) to exhibit A–4 to this subpart)
Exhibit G–4 Restrictive-Use Agreement (To be used with paragraph (C) to exhibit A–4 to this subpart)

## Subpart E—Prepayment and Displacement Prevention of Multi-Family Housing Loans

### § 1965.201 General.

Requests to pay Multi-Family Housing (MFH) loans in full require that certain actions be taken to ensure the affordability of housing for specified tenants for a guaranteed period of time. The requirement applies to all projects, whether or not they are subject to restrictive-use provisions or prohibitions on prepayment. This subpart provides step-by-step guidance for use by Farmers Home Administration (FmHA) and MFH borrowers when prepayment requests are made. The steps outlined are mandated by the Rural Rental Housing Displacement Prevention Provisions of the Housing and Community Development Act of 1987. When a MFH project is subject to multiple FmHA MFH loans, and the borrower offers prepayment or payment in full for one or more but not all of the MFH loans on the project, the borrower will not be allowed to pay off the most restrictive loan without invoking the prepayment provisions of this Subpart, unless the borrower agrees to be bound by the more restrictive provisions for the balance of the time period remaining on the more restrictive loan being paid in full.

### § 1965.202 Definitions.

*Affordable housing.* Housing with a rent rate which does not create new or increased rent overburden for tenants of prepaying projects.

*Displaced tenant.* A displaced tenant is a tenant who is either forced to move from a project or a tenant who experiences new or increased rent overburden as a result of prepayment of a MFH loan. The new or increased rent overburden may occur at the time of prepayment or at any time in the future restrictive-use provisions are in force.

*Income limits.* Very low, low, and moderate income are defined in accordance with exhibit C of subpart A or part 1944 of this chapter (available in any FmHA office).

*Letter of priority entitlement (LOPE).* A letter issued by FmHA to a tenant displaced through a prepayment action that will give the tenant priority on waiting lists at any FmHA project for which they may qualify.

*Local nonprofit corporation or public agency.* A public agency or nonprofit corporation which operates primarily in the local community and its trade area. Local nonprofit corporations must have a broad based board reflecting various interests in the community or trade area. A public agency must be organized in accordance with State and 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 requirements of § 1944.211(a)(10)(i) of subpart E of part 1944 of this chapter. County-wide agencies/corporations may meet the definition of local organization if, in the judgment of the District Office, the community's trade area is county-wide. Tenant associations and cooperatives may 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 which 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 Alaskan Native; and 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 prior to the final amortization date as described in § 1965.208 of this subpart.

*Protected population.* Individuals or families, whether very low, low, or moderate income, who are current tenant or wish to occupy rural rental housing (RRH) or labor housing (LH), and who are protected by a particular restrictive-use provision.

*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 directors 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 payor 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 8.* 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 rent 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.

**§ 1965.203 Nonprofit organization and public agency interest lists.**

Nonprofit organizations and public agencies interested in being notified of projects being offered for sale by FmHA borrowers wishing to prepay should contact FmHA. Local nonprofit and public agencies wishing to purchase projects in one district need only contact the applicable FmHA District Office. Organizations or agencies interested in one state only should contact the FmHA State Office. National and regional nonprofit organizations interested in receiving multi-state notifications should contact the FmHA National Office. Interested organizations should submit their names, addresses, contact persons, and the areas in which they wish to purchase. The notification to FmHA must be updated annually if the organization wishes to continue to receive notifications of pending prepayments. FmHA will send notices requesting the update at least 30 days prior to removing the organization's name from the list. The National Office will not verify the eligibility of the organizations requesting notification, but will periodically forward the names of interested organizations to State Offices. The State Office will periodically compile a list of interested nonprofit organizations and public agencies and forward the list to its District Offices.

**§ 1965.204 Processing prepayment requests and related rent increases.**

(a) *Chronological order of steps in processing prepayment requests.* Prior to approving prepayment of an FmHA MFH loan, FmHA must determine the eligibility and ability of the borrower to prepay the loan; attempt to keep needed housing in the very low-, low-, and moderate-income market; and ease the transition of tenants that may be affected by the conversion of a federally-financed project to unsubsidized conventional housing. The remainder of this procedure provides the chronological order for the actions to be taken:

(1) Borrower written request for prepayment (§ 1965.205 and exhibit C of this subpart).

(2) Required notifications (§ 1965.206 of this subpart).

(3) Evaluation of borrower ability to prepay (§ 1965.211 and exhibit E of this subpart).

(4) FmHA incentive offer and borrower decision regarding incentives (§§ 1965.213 and 1965.214 and exhibits D and E of this subpart).

(5) Evaluation of project need by FmHA (§ 1965.210 and exhibit E of this subpart).

(6) Approval of prepayment under exception authority (§ 1965.215 and exhibit E of this subpart).

(7) Sale to nonprofit organizations or public agencies (§§ 1965.216 and 1965.217 of this subpart).

(8) Approval of prepayment in the absence of interest in purchase by nonprofit organization of public agency (§§ 1965.218 and 1965.219 of this subpart).

(9) Actions to be taken in the event of restrictive-use violations (§ 1965.222 of this subpart).

(10) Relationship of these procedures to other servicing actions (§ 1965.223 of this subpart).

(11) Prepayment of loans due to advance payments or completion of amortized payments (§ 1965.224 of this subpart).

(b) *Rent increases resulting from prepayment process.* If rent increases are necessary due to the making of an equity loan to avert prepayment with or without a transfer, the procedures for tenant notifications and comment will be followed as set forth in paragraphs IV C and V B of exhibit C to subpart C of part 1930 of this chapter. The reason for the rent increase will be shown as "to meet the additional expense incurred in order to avert removal of (name of project) from the FmHA program."

**§ 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;

(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 would not qualify 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 make the required determination needed to develop an incentive offer as outlined in exhibit D 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;

(4) Certification that the housing will continue to be administered in accordance with Fair Housing Act policies;

(5) A statement from the borrower accepting restrictive-use 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.

**§ 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 of 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 receipt 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 denied before notifying 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/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 terms 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

(xi) 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 contacted 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 (*date*). (At that time/ (date restrictive-use provisions expire)/ (other relevant date), your rent may be raised to _____/ and/or you may be asked to move from this project."

(ii) The borrower will also be required to provide new tenants with copies of all letters sent to existing tenants advising them of the status of the prepayment. The Servicing Office will

also send new tenants any additional correspondence sent to existing tenants, but will inform the new tenants that they will not be eligible for an LOPE.

(6) *On-going tenant notification.* The Servicing Office will periodically notify tenants of the status of the prepayment request and actions being taken. Tenant notifications are to continue until the loan is prepaid, an incentive or loan to a nonprofit is obligated, or the prepayment request is withdrawn. Notification will be sent to tenants as each decision is made or one year after the last notification, whichever is earlier.

**§ 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 RRH 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.

**§ 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.

**§ 1965.209 Restrictive-use provisions after prepayment.**

(a) Restrictive-use provisions protect tenants in prepaid projects from future rent increases that would create 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 in 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.

**§ 1965.210 Loans approved prior to December 15, 1989—FmHA actions when processing prepayment requests.**

For loans approved prior to December 15, 1989, that have not 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.

**§ 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.

**§ 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 conversion of the project from subsidized housing to unsubsidized conventional housing will be considered. Additionally, project reserve accounts and the present worth of any unexpired non-FmHA project based tenant subsidies will be valued as assets of the project 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.

**§ 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 any equity loan is accepted, the equity loan may be processed and closed 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 RRH 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 LP 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.

(iii) Reamortizing the existing debt under the provisions of § 1965.70 of subpart B of this part should be examined to determine if reamortization

will lower existing debt service, thereby reducing tenant rent overburden and the need for additional RA.

(3) *Increase the maximum annual return on investment.*

(i) *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 no 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.

(ii) *Rate of return.* Borrowers not eligible to receive an equity loan but who are determined likely to prepay will be offered an incentive package which may 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 ¼ 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 established in the initial loan.

(iii) *Recept of increased return.* Regardless of any increased return on investment agreed to as part of the incentive offer, the actual withdrawal of the return remains subject to conditions specified in paragraph XII B 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 Plan II loans or increase the 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 incentives 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 commitment 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 2 c 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 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 maximum amount of 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.

**§ 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. Tenants will be notified 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 in accordance with exhibit A–11 of subpart E 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) of this section. The determination of borrower eligibility, evaluation of the transfer and any equity loan will be made concurrently. If a proposed transferee is determined not to be eligible for the 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 transmitted, 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 and RA. Authorizations will be issued in the order in which complete prepayment requests were received as set forth in § 1965.205 of the subpart. To fully utilize all available prepayment incentive loan funds and RA, projects with fully processed incentive packages 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:

(Note: If the project is to be transferred 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 $_____." No equity level or rate of return need be mentioned.

(2) If 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 1944–7, "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 paragraph 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 §§ 1965.68 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, and project 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 the deed, security instruments, loan agreement/resolution, assumption agreement, and/or reamortization agreement, as appropriate with the advice of OGC.

**§ 1965.215 Borrower rejection of incentive offer—approving/disapproving prepayment**

(a) *Approving or disapproving prepayments.* If the borrower rejects the incentive offer and indicates a preference 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. Exhibit E of this subpart provides additional guidance for making the necessary determinations. The State Director or other designated official in the National Office, with the recommendation of the Servicing Official, will make the decision to either approve or disapprove the prepayment request.

(b) *Determining the need for housing.* (1) The Servicing Office or other designated office will review the following, using exhibit E of this subpart as a guide:

(i) Local market conditions;

(ii) Information submitted as support for the prepayment request;

(iii) Responses to the 30-day tenant comment period;

(iv) the effect of the prepayment on minorities, handicapped individuals, and families with children; and

(v) Any other relevant information.

(2) The results of the determination of need will be documented in the case file.

(c) *Conditions under which prepayment may be approved.* In certain instances, prepayment may be approved after a borrower has rejected the incentive offer. If the decision is made

to approve a prepayment request, restrictive-use provisions will be inserted in the deed, deed of release or satisfaction, if the project is determined to be needed under the provisions of the following paragraphs (1)(i) and (ii) of this section. The borrower will also execute the applicable restrictive-use agreement. If the project has section 8 assistance, the local HUD Area Office must be notified. To determine whether a prepayment offer can be approved, the following decision steps must be followed by the Servicing Office:

(1) *The loan is not currently subject to restrictive-use provisions nor prohibition on prepayment.* To determine whether a loan not subject to restrictive-use provisions or prohibition on prepayment may prepay, and if so, what restrictions must be inserted in the release documents, the following determinations must be made.

(i) If the Servicing Office cannot make the determination that housing opportunities to minorities will not be materially affected as a result of the prepayment, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive language found in paragraph (A) or (B) of exhibit A–4 of this subpart, and to execute the applicable Restrictive-Use Agreement found in exhibit G–2 or G–3 of this subpart;

(A) Maintain the housing for low- and moderate-income people for a minimum period of 20 years from the date of the closing of the last loan or servicing action. At the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (A) of exhibit A–4 of this subpart; or

(B) If 20 years from the date of the closing of the last loan or servicing action has already lapsed, offer to sell the housing to a qualified nonprofit organization or public agency in accordance with paragraph (e)(9) of this section and paragraph (B) of exhibit A–4 of this subpart;

(ii) If the Servicing Office determines that housing opportunities to minorities will not be materially affected as a result of prepayment, but that there is an inadequate supply of safe, decent, and affordable rental housing within the market area, the borrower may prepay if the borrower agrees to the following restrictions and inclusion of the applicable restrictive-use language found in paragraph (C) of exhibit A–4 of this subpart and agrees to execute the Restrictive-Use Agreement found at exhibit G–4 of this subpart:

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 income. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project.

(iii) If the Servicing Office determines that housing opportunities to 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. The provisions of paragraph (c)(3) of this section will apply.

(2) *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.

(3) *It is determined by FmHA that restrictions are not needed.* If actions in accordance with § 1965.206 (b)(2) of this subpart and paragraph (e)(3) of this section have been taken to ensure that alternative rental housing will be made available to each tenant upon displacement, the prepayment may be accepted without restrictions if:

(i) For loans not subject to restrictive-use provisions nor prohibition on prepayment, it is determined by FmHA that housing opportunities for minorities will not be materially affected as a result of the prepayment. Exhibit E of this subpart will be used to assist in making this determination.

(ii) For loans subject to restrictive-use provisions, it is determined Federal or other financial assistance provided to residents will no longer be provided, due to no fault, action or lack of action on the part of the borrower. If a borrower applies to have restrictions removed after prepayment because Federal or other financial assistance will no longer be provided, the restrictions will be released only if the loss of Federal or other financial assistance could not have been reasonably anticipated at the time of acceptance of the prepayment.

(iii) Regardless of whether or not the loan is subject to restrictive-use provisions, a 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 which also has an LH grant, 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 casefile and appended to the prepayment report. Any additional materials used to reach the decision will be included in the casefile.

(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 a 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 on-farm labor housing units, only items relevant to the on-farm units need be completed. 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 deeds of release. 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 180 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 also posted 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 of 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 restrictive-use provisions.) All current eligible tenants may continue to occupy the housing until the tenants decide to voluntarily move, the tenants no longer meet eligibility requirements or the restrictive-use provisions expire on (insert expiration date), 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, or those 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 eligible tenant rents. The preceding 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 owner of the project will continue eligible tenant rents at levels that will not create or increase rent overburden until (insert date the restrictive-use expires. However, declines in tenant income shall not require 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 unit sizes of 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 Official 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 any location in the country.

(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.

(iii) 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 or subpart C of part 1930 of this chapter.

(iv) If the tenant holding 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 reassigned 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 moves, the new 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, describe the limits on rents during the period of restrictions, explain that no tenant can have a lease renewal denied for other than "good cause" (which cannot include income level), that charges, rules and regulations, and services may not change substantially from those aplicable at present, and explain all other provisions necessary to protect affected tenants including Fair Housing Act Amendment provisions. The lease shall retain provisions for annual income certification. The approved lease, with signatures of both the borrower and FmHA, will be maintained by the Servicing Office until expiration of the restrictive-use period, although FmHA will not be responsible for monitoring compliance. If the owner wishes to make subsequent modifications to the lease, FmHA will review the lease to ensure that none of the modifications are contrary to the intent of this regulation.

(6) *Borrower responsibilities after prepayment.* Prior to accepting the prepayment, the Servicing Official will meet with the borrower to discuss borrower obligations 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, in detail with the borrower. In particular, the Servicing Official will explain that 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 forthin subpart C of part 1930 of this chapter, and also adhere 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 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 former borrower must be able to document that acceptable waiting lists were maintained, units were rented to appropriate tenants, and rents were established at appropriate levels in accordance with the applicable restrictive-use provisions. The former borrower must also agree to make the documentation available for Government inspection upon request. The former borrower and any successors in interest will be required to provide the following signed and dated certification to the applicable Servicing Office or other designated office within 30 days of the beginning of each calendar year for the full period of the restrictive-use provisions:

(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 set 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 borrower) understands that failure to operate the project in conformance with the restrictive-use provisions may cause a tenant or the Government to seek enforcement of the provisions.

The borrower must also agree to execute the applicable Restrictive-Use Agreement found at exhibits G–1 thru 4 to this Subpart.

(7) *Servicing Office responsibilities after prepayment.* Upon prepayment, the Servicing Office will send a notice to all tenants informing the tenants of the acceptance of the prepayment. The borrower will 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 certaification 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 actions as necessary to follow-up on 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.

(8) *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 § 1965.90 (b) of subpart B of part 1965 of this chapter.

(9) *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 and time period 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.

(f) *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 a request to prepay if the conditions required for prepayment stated in paragraph (c) of this section and exhibit E of this subpart cannot be met, or if information submitted with the prepayment 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 rejection, in accordance with subpart B of part 1900 of this chapter and §§ 1965.213 and 1965.215 and exhibits D and E of this subpart. The letter denying the prepayment reuest may revise the original incentive offer if new information documenting the loss the borrower may suffer if not allosed to prepay 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 project prepayment date unless the Servicing Office determines that there is sufficient time to consider tenant comments, verify information submitted with 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 allow 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 notification letters were 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.

(g) *Borrower appeals of prepayment disapproval.* The borrower may appeal the decision to deny prepayment without restrictive-use provisions within 30 days of the receipt of the rejection, in accordance with subpart B of part 1900 of this chapter. The incentive offer may be appealed at the same time if the borrower chooses. Tenants will be notified if a borrower appeal is pending, given the right to send written testimony to the appeal officer, and have one representative at the appeal hearing. If the decision to deny prepayment is upheld or the incentive offer is modified, the borrower will be given an additional 30 days to respond to the incentive offer. Based upon the borrower response and whether the loan is subject to restrictive-use provisions, the Servicing Office will act in accordance with appropriate sections of this subpart. Borrowers subject to restrictive-use provisions will not be granted appeal rights.

**§ 1965.216 Borrower not subject to restrictive-use provisions nor prohibition on prepayment, no incentive agreement is reached and prepayment cannot be accepted.**

In instances where the borrower is not subject to restrictive-use provisions and no incentive agreement can be reached between FmHA and the borrower, and the prepayment cannot be accepted under § 1965.215 and Exhibit E of this subpart because a 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 appeals 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 value arrived at will result 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 1922–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 the FmHA Servicing, State, 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. The borrower may choose to suspend advertising 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 time 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, regardless of when 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 E 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 FmHA Administrator 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 transferor 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 project 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 person 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:

(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.

**§ 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 nonprofit corporation or public agency, the purchasing organization will file a complete application in accordance with § 1965.65 (f) 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 reamortization 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 transfer is found to be not feasible or because the organization has 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 organization in accordance with Subpart B of Part 1900 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 exceed 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) *Special 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 102 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. To be eligible for 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 fees, 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 docket and project as well as legal, technical, and 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 grantee 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 other Federal officials 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 of costs, 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 offer or option, submit a complete transfer and loan package (if applicable), as described in § 1965.65 of subpart B of part 1965 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 time of submittal of the grant application package and the applicant expects that further advances or reimbursements may be needed, 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 the closing date of the transfer and loan and shall be submitted on SF–270;

(E) Fully document all requests for advances with line item estimates on SF–270. Requests for reimbursement shall be documented with itemized bills or receipts for each item listed on SF–270;

(F) Include SF–269A with the grant application if the entire amount of the grant is being requested at that time. If the grant will be advanced or reimbursed in more than one draw, SF–269A will be submitted with the final draw;

(G) Include a signed statement for all 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."

(iv) *Processing grants.* The following actions will be taken by FmHA when a grant application 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 1944–51, "Multiple Family Housing Obligation Fund Analysis," 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 officers 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 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 assumption to the State Office for approval in accordance with § 1965.65 of subpart B of this chapter.

(2) Transfer any RA associated with the project to the transferee 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.

(f) *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.

**§ 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 all organizations whose names were provided by the District or State Office were contacted in accordance with § 1965.216 (b) of this subpart and offered the housing for purchase;

(4) No qualified nonprofit organization has made a bona fide offer to purchase the property for the appraised fair market value. Note: (An offer will be considered to be bona fide if there is a written offer to purchase the project at fair market value, even if the offer is contingent on FmHA funding when no funding is available.); and

(5) Funds have been available for the purpose of carrying out a transfer/sale during this period.

(b) *Funds are not available.* A borrower may be allowed to prepay even if an eligible nonprofit organization or public agency has offered to purchase the project if the following lack of funding exists. All funds for funding nonprofit organizations and public agencies for the purpose of purchasing any project in the country must have been exhausted for a period of 15 months. This determination is not related to the length of time the particular project has been on the waiting list. The National Office will periodically advise State Offices of the status of the waiting list and the availability of funds.

**§ 1965.219 FmHA processing of prepayment.**

When a prepayment is accepted in accordance with § 1965.218 of this subpart, the Servicing Office will process the prepayment in accordance with the applicable provisions of § 1965.215 (e)(1), (2), (3), (4), and (8) of this subpart.

**§§ 1965.220–1965.221 [Reserved]**

**§ 1965.222 Violations of restrictive-use provisions.**

Should the Servicing Office receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use provisions set out in exhibit A–3 or A–4 of this subpart or the Restrictive-Use Agreements set out in exhibits G–1 thru 4 of this subpart by the owner of a previously FmHA-financed project, the following actions will be taken:

(a) The complainants will be informed that they may pursue enforcement through the courts.

(b) The Servicing Office or other designated office will conduct a preliminary evaluation of the complaint. This evaluation may necessitate the gathering of additional information. Should the preliminary evaluation indicate the complaint is not valid, the complainant will be so informed. Should the preliminary evaluation indicate the complaint is or may be valid, then the complaint, all facts gathered, an evaluation report, and Servicing Office recommendation will be forwarded to the State Office or other designated office for review and action.

(c) If the State Office or other designated office determines that a violation of the restrictive-use provisions has likely occurred, the Administrator will be notified. The State Office or other designated office will ask the OGC to provide advice in such cases and, if appropriate, refer the case to the Department of Justice or other appropriate agency for enforcement. A copy of any complaint requesting enforcement of the restrictive-use provisions submitted to the Department of Justice or other appropriate agency should also be forwarded to the Administrator.

**§ 1965.223 Relationship with acceleration of accounts, bankruptcy, foreclosure, or inventory properties.**

(a) *Acceleration of accounts.* Accelerations of accounts will be prepared in accordance with FmHA Guide Letters 1955–A–1 or 1955–A–2 (available in any FmHA office). Any FmHA loan made after December 21, 1979, prepaid in response to an acceleration of the account will be required to have the appropriate restrictive-use language inserted in the deed of release or satisfaction, as appropriate upon the advice of OGC. Any FmHA loan made on or before December 21, 1979, with payment-in-full made in response to an acceleration of the account, will be required to have the appropriate restrictive-use language inserted on the instrument recorded in the real estate records, as appropriate upon the advice of OGC, only if the payment occurs within 1 year after the borrower had initiated a request to prepay the loan(s). The restrictions used will be those contained in exhibit A–3 of this subpart for loans subject to restrictive-use provisions or prohibited from prepaying. The restrictive-use period will extend for the remaining term of the accelerated loan or length of the existing restrictive-use period, whichever is applicable.

(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.

(c) *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 non-program 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.

**§ 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 or falls below six 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 § 1965.205 of this subpart and complete all applicable actions required by this subpart before a final payment can be accepted.

**§§ 1965.225–1965.248 [Reserved]**

**§ 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 RRH or LH programs, or result in undue hardship on the tenants 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.

**§ 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 0575–0155. 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 control number 0575–0155), Washington, DC 20503.

## Exhibits to Subpart E

### 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

The following Multi-Family Housing projects are 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 of this chapter, or an incentive to deter prepayment of the loan as described in this subpart.

All loans 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/resolution, assumption agreement, interest credit agreement, or reamortization agreement, as appropriate. The restrictions are applicable for a term of 20 years from the date on which 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 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 (the date the last loan on 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 before 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 due to no fault, action or lack of action on the part of the borrower. A tenant or individual wishing to occupy the housing may seek enforcement of this provision, as well as the Government."

### 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

Multi-Family Housing projects made subject to restrictive-use provisions because of a transfer and subsequent loan to a nonprofit organization or public agency in order to avert prepayment of the loan as described in this subpart are subject to restrictions which are set forth in the loan instruments or security agreements. Loans meeting the preceding conditions with prepayment incentives obligated after the effective date of this regulation will be required to have the following restriction inserted in the deed, conveyance instrument, loan resolution, and assumption agreement, as applicable:

"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 Farmers Home Administration regulations then extant during the remaining useful life of the project. A tenant or person wishing to occupy the housing may seek enforcement of this provision as well as the Government. Throughout the remaining useful life of this project, 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 to meet these conditions. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing, or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower."

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 superceded 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.

### Exhibit A–3—Required Clauses for Prepaid Projects 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 have 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 reamortization as set forth in this subpart;

(c) Any loan made subject to restricitive-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 execute the Restrictive-Use Agreement found at exhibit G–1 to this subpart.

"The owner and any successors in interest agree that the housing located on this property will be used only as authorized under section 514 or 515 of title V of the Housing Act of 1949, as amended, and 7 CFR part 1965, subpart E, or other regulations then extant until (insert date shown on existing restrictive-use provisions). A tenant or applicant for occupancy may seek 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. Rents, other charges, and conditions of occupying will be set so 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, 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 (insert "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 same extent that the tenants were protected prior to the prepayment and for the

length of time remaining under the restrictions prior to the prepayment.

## Exhibit A–4—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 not 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 as required in 7 CFR part 1965, subpart E or other regulations then extant during this 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 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 as 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 § 1965.216 of this subpart. The borrower will also be required to execute the Restrictive-Use Agreement found at exhibit G–3 of 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 wish to remain at the project. The provisions 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 eligible person currently 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. Existing tenants are protected to ensure that none experience new or increased rent overburden until each voluntarily moves from the project. The owner also agrees to keep a notice posted at the project in a place available for tenant inspection, for the remaining useful life of the project or until the last existing tenant vacates, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates for current tenants as of the date of the prepayment will be consistent with those necessary to maintain the project for low- and moderate-income tenants. A tenant may seek enforcement of this provision as well as the Government."

## Exhibit B—Report on Prepayment [Reserved]

## Exhibit C—Checklist for Reporting Prepayment [Reserved]

## Exhibit D—Methodology for Determining Prepayment Incentives [Reserved]

## Exhibit D–1—Worksheet for Incentive Calculations [Reserved]

## Exhibit E—Administration Guidance for Making Prepayment Determinations [Reserved]

## Exhibit F—Prepayment and Displacement Prevention Grant Agreement

This agreement dated _____ _____, 19____, between _____which is organized and operating under _____ _____ _____herein call "Grantee,"

(Authorizing Statute)

and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," Witnesseth:

Whereas:

Grantee has determined to undertake a project of acquisition of a multi-family housing project financed by the Grantor to house rural residents and has duly authorized the undertaking of such a project.

Grantee wishes to obtain grant funds to assist in the costs of acquisition of such project.

Grantor has agreed to grant the Grantee a sum not to exceed $_____ subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time it is determined that the Grantee has failed to comply with the conditions of the grant.

Now, therefore, In consideration of said grant by Grantor to Grantee, to be made pursuant to section 502 of the Housing Act of 1949 to cover any direct costs (other than the purchase price) incurred by the organization or agency in purchasing and assuming responsibility for the housing and related facilities involved, as defined by applicable Farmers Home Administration (FmHA) instructions.

Grantee agrees that grantee will: A. Attempt to acquire said project in accordance with FmHA regulations.

B. If acquired, either directly or through contract, manage, operate and maintain the project continuously in an efficient and economic manner.

C. Make services of said project available within its capacity to all eligible rural residents without discrimination because of race, color, religion, sex, age, handicap, marital or familial status, or national origin.

For more specific requirements see 7 CFR part 15, subparts A and B.

D. Provide Grantor with such periodic reports as it may require and permit periodic inspections of its operations by a representative of the Grantor.

E. To execute Forms FmHA 400–1, "Equal Opportunity Agreement," and FmHA 400–4, "Assurance Agreement," and to execute any other agreements required by Grantor which Grantee is legally authorized to execute. If any such form has been executed by Grantee as a result of a loan or transfer being made to Grantee by Grantor contemporaneously with the making of this grant, another form of the same type need not be executed in connection with this grant.

F. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated hereinabove, with interest at the rate of 5 percentum per annum from the 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 provisions 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 specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

J. Provide an audit report pursuant to 7 CFR part 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 pending that 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 part 3016.

M. Comply with the requirements of 7 CFR part 3017, subpart F, relating to drug-free workplace requirements and 7 CFR part 3018 relating to restrictions on lobbying.

Grantor agrees that it: A. Will make available to Grantee for the purpose of this Agreement not to exceed $_____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 Grantee'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 Grantee and Grantor 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 corporated seal affixed by its duly authorized

_____

Attest: _____

By _____

(Title) _____

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 7 Code of Federal Regulations (CFR) part 1965, 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 United States. 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 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.

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 conformance with the restrictive-use provisions may cause a tenant or the United States to seek enforcement of the provisions.

Date: _____
Owner: _____
By: _____
(Title) _____

### Exhibit G–2—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 7 Code 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) to 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 or 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.

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 recertification, 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: _____
(Title) _____

### Exhibit G–3—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 of 7 Code of Federal Regulations (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 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 a sale to nonprofit organization or public agency takes place:

(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: _____
(Title) _____

### Exhibit G–4—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 7 Code 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 life of the project or until the last existing tenant voluntarily vacates, 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 tenants. A tenant may seek enforcement of this provision, as well as the United States.

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 remaining useful life of the project or until the last existing tenant voluntarily vacates. The owner agrees to be responsible for ensuring that rental procedures, verification and certification of income and/or employment, least 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 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 the last existing tenant voluntarily vacates:

(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: _____
(Title) _____

Dated: July 2, 1993.

**Bob Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 93–16613 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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## 7 CFR Part 1955

**RIN 0575–AB21**

## Disposal of Inventory Property

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its regulation on the sale of inventory property. This action is being taken to comply with recent legislation. The intended effect is to encourage sale of groups of section 502 inventory property as affordable rental housing.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Janis D. Lange, Loan Specialist, Multi-Family Housing Servicing and Property Management Division, FmHA–USDA, room 5331, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250, telephone: (202) 720–1616.

**SUPPLEMENTARY INFORMATION:**

### Classification

This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprise to compete with foreign-based enterprises in domestic or import markets. In addition, this regulation has been reviewed in light of section 2 of E.O. 12778 and meets the applicable standards provided in section 2(a) and 2(B)(2) of that Order.

### Background/Discussion

Public Law 101–625, the "Cranston-Gonzalez National Affordable Housing Act," dated November 29, 1990, amends the Housing Act of 1949, as amended. The Cranston-Gonzalez Act requires the Secretary to allow sales of Government-owned inventory property for purposes of converting section 502 single family homes to rental units under section 514 with mortgages containing repayment terms with up to 33 years. In addition, these loans may be made to for-profit entities, which have good records of providing low income housing under section 515. These sales will be made to all qualified applicants regardless of race, religion, color, age or sex. FmHA is amending its regulations to comply with the provisions of this law.

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. However, this revision is not being published for comment because the statute mandates specific action.

### Programs Affected

These changes affect the following FmHA programs listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.427 Rural Rental Assistance Payments

### Intergovernmental Consultation

For the reasons set forth in the Final Rule and related Notice(s) to 7 CFR part 2015, subpart V, the following programs are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials: 10.404-Emergency Loans; 10.406-Farm Operating Loans; 10.407-Farm Ownership Loans; 10.416-Soil and Water Loans. However, this activity impacts the following programs which are subject to intergovernmental consultation with State and local officials: 10.405-Farm Labor Housing Loans and Grants; 10.410-Low Income Housing Loans; 10.411-Rural Housing Site Loans; 10.415-Rural Rental Housing Loans; 10.417 Very Low Income Housing Repair Loans and Grants.

### Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1949, Public Law 92–100, an Environmental Impact Statement is not required.

**List of Subjects in 7 CFR Part 1955**

Government acquired property, Sale of government acquired property, Surplus government property.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

**Authority:** 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

### Subpart C—Disposal of Inventory Property

2. In Section 1955.114, the introductory text of paragraph (c) is revised to read as follows:

**§ 1955.114 Sales steps for program property (housing).**

* * * * *

(c) *Single family inventory converted to MFH.* Written offers by nonprofit organizations, public bodies or for-profit entities, which have good records of providing low income housing under section 515, will be considered by FmHA for the purchase of multiple SFH units for conversion to MFH. Section 514 credit sale mortgages may contain repayment terms up to 33 years and section 515 credit sale mortgage terms may be up to 50 years.

* * * * *

Dated: May 20, 1993.

**Bob Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 93–17226 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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**7 CFR Part 1940**

**RIN 0575–AB60**

## Section 515 Nonprofit Set Aside Funds

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its section 515 funding regulations. This action is taken to implement section 708 of the Housing and Community Development Act of 1992 (herein referred to as the "Act") which revises section 515 (w) of the Housing Act of 1949. Section 708 reauthorizes the Nonprofit Set Aside (NPSA) and sets the percentage for FY 93 and FY 94 at 9 percent; modifies the applicant eligibility requirements for NPSA funds to allow a partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary, to receive consideration for NPSA funds; and modifies the provisions for reallocation and pooling of unused NPSA funds. The intended effect of this rulemaking action is to bring FmHA regulations into compliance with the Act.

**DATES:** This interim final rule is effective July 21, 1993. Written comments on this interim final rule must be received on or before September 20, 1993.

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

**FOR FURTHER INFORMATION CONTACT:** Linda Armour, Loan Specialist, Multi-Family Housing Processing Division, Farmers Home Administration, USDA, room 5349—South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608.

**SUPPLEMENTARY INFORMATION:**

### Classification

This interim final rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one Agency or be controversial. The net effect is to comply with section 708 of the Act.

### Background/Discussion

Section 708 of the Act requires that the percentage of Nonprofit Set Aside (NPSA) funds for fiscal years 1993 and 1994 be set at 9 percent of the amounts available to each State for those years; that an eligible applicant for NPSA funds may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary; and requires that, beginning in FY 94, NPSA funds not used by any State within 9 months of the allocation be pooled and made available for any other eligible nonprofit entity in any State, with any funds remaining after funds have been pooled and obligated for 30 days being returned to the States on a proportionate basis for use by any other eligible entity. FmHA is amending its regulations to comply with the provisions of the Act.

Section 708 also provides the authority for the Secretary to provide amounts from NPSA in excess of $750,000 in Small State Allocation Set Aside (SSASA) states if such amounts are necessary to finance a project. While this provision will allow development of larger proposals in many states, FmHA is concerned that it may create a backlog of loan requests for SSASA funds.

States in which 9% of their allocation is less than $750,000 are considered SSASA states. Each SSASA state contributes 9% of their allocation to the SSASA pool of funds. Based upon FY 93 allocations, 28 states are SSASA states. Nine percent of these 28 states' allocation equals $8,804,000. Hence, 28 states will be competing for $8.8 million. If each SSASA state were to develop one application of $876,000 (the average cost of a typical 24-unit project), this would create approximately $24.5 million in loan requests against $8.8 million in available funds. With the anticipated demand for NPSA funds as a result of section 708, we would anticipate there to be a backlog for NPSA, and especially SSASA funds. This delay may be minimized by the fact that these preapplications may also compete for non-NPSA funds and such guidance in provided in the regulation.

To minimize backlogs, the interim final rule encourages loan requests in SSASA states of less than $750,000. To implement the aforementioned provisions of section 708, SSASA states will be permitted to request sufficient funds to develop an average sized project based upon the average construction costs in the state. For example, if the average project size in SSASA State A is 24 units and the average construction cost in the state is $35,000 per unit, the State may be authorized to access $840,000 from SSASA. FmHA believes that some type of ceiling is necessary, otherwise, the delay for funding could be significant. FmHA is especially interested in comments on this provision of section 708 of the Act, and how to minimize

delays in potentially funding SSASA requests.

With regard to pooling of unused NPSA funds, FmHA has interpreted provisions of the Act which reference "9 months after the allocation" to mean 9 months after the beginning of the Fiscal Year; October 1 of each year. Otherwise, if the allocation of section 515 funds was not made available until January 1, the authority for the Section 515 program (which expires September 30th of each year) would end before pooling could begin.

FmHA has also removed administrative provisions, such as the amount of funds, pooling dates, etc., from the text of the regulation. Instead, the Agency intends to provide this guidance in Attachments which will not be published in the **Federal Register**, but will be available in any FmHA State Office. Much of the administrative guidance, such as amount of NPSA funds, pooling dates, etc., is already published as a Notice in the **Federal Register** each year when the Agency announces the availability of Housing funds. During the comment period on this interim final rule, copies of the Attachments referenced herein may be obtained from Linda Armour of FmHA at the aforementioned address. Utilizing nonpublished Attachments will provide the Agency with the ability to make administrative changes when the program is reauthorized rather than the lengthy process for promulgating a revised regulation. FmHA proposes to publish such administrative guidance in a Notice in the **Federal Register** as necessary.

FmHA has provided guidance on pooling of NPSA funds in a separate Attachment. A separate Attachment is used because pooling for FY 93 and FY 94 will be handled differently as required by statute. Briefly, only SSASA funds are pooled in FY 93. Funds from Large State Allocation Set Aside (LSASA) are not pooled. Beginning in FY 94, unused SSASA and LSASA funds will be pooled together for access by any state.

FmHA has revised its definition of nonprofit to comply with section 708 of the Act. More processing guidance for NPSA requests is included, reemphasis of Nondiscrimination policies is added, and consistent with previous years, consumer cooperatives and Indian Tribes are included in the definition of nonprofit.

**Discussion of Use of Interim Final Rule**

It is the policy of this Department that rules relating to public property loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the purpose of the change is to comply with a mandatory statute in the Act and any delay would be contrary to the public interest. The Secretary of Agriculture has provided an exemption to proposed rulemaking in accordance with Section 534 of the Housing Act of 1949. Comments are still being solicited and will be considered in developing a final rule. We anticipate publication of the final rule to coincide with the beginning of Fiscal Year 1994.

**Programs Affected**

The affected program/activity is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans.

**Intergovernmental Consultation**

For the reasons set forth in the final rule, related Notice(s) to 7 CFR part 3015, subpart V, program 10.415 is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Civil Justice Reform**

The proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

**Environmental Impact Statement**

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

**List of Subjects in 7 CFR Part 1940**

Allocations, Administrative practice and procedure, Agriculture, Grant programs-Housing and community development, Loan programs-Agriculture, Rural areas.

Therefor, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

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

### Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Exhibit B to subpart L is revised to read as follows:

**Exhibit B to Subpart L—Section 515 Nonprofit Set Aside (NPSA)**

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize Section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990 established the statutory authority for the Section 515 NPSA funds.

III. *Eligible entities.* Amounts set aside shall be available only for nonprofit entities in the State, which may not be wholly or partially owned or controlled by a for-profit entity. An eligible entity may include a partnership, including a limited partnership, that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. For the purposes of this exhibit, a nonprofit entity is an organization that:

A. Will own an interest in a project to be financed under this section and will materially participate in the development and the operations of the project; and

B. Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986; and

C. Has among its purposes the planning, development, or management of low-income housing or community development projects; and

D. Is not affiliated with or controlled by a for-profit organization; and

E. May be a consumer cooperative, Indian tribe or tribal housing authority.

IV. *Nondiscrimination.* FmHA reemphasizes the nondiscrimination in use and occupancy, and location requirements of § 1944.215 of subpart E of part 1944 of this chapter.

V. *Amount of Set Aside.* See Attachment 1 of this exhibit (available in any FmHA State Office):

A. *Small State Allocation Set Aside (SSASA).* The allocation for small States has been reserved and combined to form the SSASA, as shown in Attachment 1 of this exhibit (available in any FmHA State Office). The definition of small State is included in Attachment 1 of this exhibit (available in any FmHA State Office).

B. *Large State Allocation Set Aside (LSASA).* The allocation for large States has been reserved in the amounts shown in Attachment 1 of this exhibit (available in any FmHA State Office). The definition of large State is included in Attachment 1 of this exhibit (available in any FmHA State Office).

C. *NPSA Rental Assistance (RA).* NPSA RA has been reserved in the National Office as shown in Attachment 1 of this exhibit (available in any FmHA State Office).

VI. *Access to NPSA funds and RA.* RA is available and may be requested, as needed, with eligible loan requests. NPSA funds and RA should be requested by the State Director using a format similar to Attachment 2 of this exhibit (available in any FmHA State Office). Funds are available as follows:

A. *SSASA:* The SSASA is available to any SSASA State on a first-come-first-served basis until pooling. See Attachment 3 of this exhibit (available in any FmHA State Office) for information regarding pooling.

B. *LSASA:* LSASA states may request LSASA funds up to the amount the state contributed to LSASA until pooling. See Attachment 3 of this exhibit (available in any FmHA State Office) for information regarding pooling.

VII. *General Information on priority/processing of Preapplications.*

A. Preapplications/applications for assistance from eligible nonprofit entities under this subpart must continue to meet all loan making requirements of subpart E of part 1944 of this chapter.

B. A separate processing list will be maintained for NPSA loan requests.

C. The State Director may issue Form AD–622, "Notice of Preapplication Review Action", requesting a formal application to the highest ranking preapplication(s) from eligible nonprofit entities defined in paragraph III of this exhibit as follows:

1. *LSASA.* In LSASA States, AD–622s may not exceed 150 percent of the amount the State contributed to the LSASA. No single Form AD–622 may exceed the amount of funds the State contributed to LSASA.

2. *SSASA.* In SSASA States, AD–622s should not exceed the greater of $750,000 or 150 percent of the amount the State contributed to the SSASA; except that the State Director in a SSASA State may request authorization to issue a Form AD–622, in an amount in excess of $750,000 if additional funds are necessary to finance an average-size proposal based upon average construction costs in the state. For example, if the average size proposal currently being funded in the state is 24 units, and the average construction cost in the state is $35,000 per unit, the state may request authorization to issue an AD–622 for $840,000. The State Director will submit such requests to the National Office including data reflecting average size/cost projects in the State. No single Form AD–622 may exceed the amount of funds the State may receive from SSASA.

D. All AD–622s issued for proposals to be funded from NPSA will be subject to the availability of NPSA funds. Form AD–622 should contain the following or similar language: "This Form AD–622 is issued subject to the availability of Nonprofit Set-Aside (NPSA) funds."

E. If a preapplication requesting NPSA funds has sufficient priority points to compete with non-NPSA loan requests based upon the District or State allocation (as applicable), the preapplication will be maintained on both the NPSA and non-NPSA rating/ranking lists.

F. Provisions for providing preference to loan requests from nonprofits is contained in § 1944.231 of subpart E of part 1944 of this chapter. Limited partnerships, with a nonprofit general partner, do not qualify for nonprofit preference.

VIII. *Exception authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or Rural Rental Housing program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from NPSA, or restrict participation in the set aside.

Dated: July 7, 1993.

**Bob Nash,**

*Under Secretary for Small Community and Rural Development.*

[FR Doc. 93–17227 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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**7 CFR Part 1980**

**RIN 0575–AB35**

## Business and Industrial Loan Program

**AGENCY:** Farmers Home Administration and Rural Development Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) and Rural Development Administration (RDA) amend their guaranteed loan program regulations to revise procedures for guaranteeing loans to businesses impacted by natural disasters such as Hurricane Andrew, Hurricane Iniki, and Typhoon Omar as well as providing such assistance for certain injuries caused by microbursts of wind. This action is needed to implement provisions of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. The intended effect is to make loan guarantees available to refinance debts for agricultural producers impacted by natural disasters and provide flexibility to use application and processing procedures of either the Business and Industry Program or Farmer Programs.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Development Administration, USDA, room 6327, 14th & Independence Avenue SW., Washington, DC 20250, Telephone (202) 720–6819.

**SUPPLEMENTARY INFORMATION:**

### Classification

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

### Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.422 Business and Industrial Loans.

### Paperwork Reduction Act

The reporting and recordkeeping requirements contained in this regulation have been approved for use through February, 1995 by the Office of Management and Budget (OMB) and assigned OMB control number 0575–0029.

### Intergovernmental Review

As set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, Business and Industrial Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA and RDA conduct intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

### Civil Justice Reform

This document has been reviewed in accordance with Executive Order 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the Executive Order.

**Environmental Impact Statement**

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA and RDA have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, as Environmental Impact Statement is not required.

**Discussion of the Rule**

FmHA and RDA are implementing provisions of the Dire Emergency Supplemental Appropriations Act by amending the existing regulations for the Business and Industry (B&I) loan program. B&I loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act cover costs arising from the consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock or damage to building structures from a microburst wind occurrence in 1992. Although part of the B&I program, loan guarantees made under this new authority are called Business and Industry Disaster (BID) loans and have some provisions different from other B&I loans.

The regulations implementing BID loans were published as a final rule with comment period in 57 FR 45986 on October 5, 1992 with a 30 day comment period. Two letters were received. One contained two comments.

One comment was that the regulation as published makes refinancing an ineligible loan purpose for loans to agriculture producers and that it should be eligible. It was never the intent of FmHA/RDA to make refinancing ineligible and this action will amend the regulation to correct that problem.

The other comment was that the regulation also makes the purchase of land ineligible and the writer thought land purchases should be allowed. The BID program is limited to financing costs that are a consequence of certain natural disasters. FmHA/RDA believes that the purchase of land would be a change in or expansion of the business and not a consequence of the natural disaster. No change is made regarding the purchase of land.

The third comment objected to the distinction made between agriculture and commercial nurseries in the BID program. The suggestion was that the regulation should be revised to make a distinction in commercial nurseries between nursery farms and retail or landscape nurseries and to recognize that nursery farming is agriculture production while retail or landscape nurseries are not. The definitions of agriculture and commercial nurseries in the section published for comment are consistent with, and need to be consistent with, definitions given in other sections of the regulation. The reason for making a distinction between agriculture and commercial nurseries is that businesses engaged in agriculture production are not eligible for guaranteed Business and Industry (B&I) loans. The BID program is the only exception. The definitions used in the BID program allow all nurseries and agricultural production to be eligible through agriculture production, as defined in the regular B&I program, is not. To change the definition as suggested would make nursery farmers ineligible for regular B&I loans. No change is made in this regard.

This final rule contains additional changes that are a matter of internal management.

**List of Subjects in 7 CFR Part 1980**

Loan programs—Business and Industry—Rural development assistance, Rural areas.

Accordingly, part 1980, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

## PART 1980—GENERAL

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

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

### Subpart E—Business and Industrial Loan Program

2. Section 1980.498 is amended by revising the introductory text of paragraph (m)(5), by revising the introductory text of paragraph (m)(6), by revising the heading of paragraph (m)(8), and by adding paragraph (m)(8)(iii) to read as follows:

**§ 1980.498 Business and industry disaster loans.**

* * * * *

(m) * * *

(5) *Filing and processing preapplications and applications.* If the applicant has already developed material for an FmHA Farmer Programs loan or if the financial and production information required by § 1980.113 of subpart B of part 1980 of this chapter is needed to document repayment ability or is required by the lender, § 1980.113 of subpart B of part 1980 of this chapter may apply with the following exceptions:

* * * * *

(6) *Evaluation of applications.* If the application is developed and processed in accordance with § 1980.113 of subpart B of part 1980 of this chapter, the provisions outlined in § 1980.114 of subpart B of part 1980 of this chapter applies with the following exceptions:

* * * * *

(8) *BID agriculture loan purposes.* * * *

* * * * *

(iii) Refinancing in accordance with paragraphs (c)(1) and (c)(2) of this section and §§ 1980.411(a)(11), 1980.451(i)(19) and 1980.452 ADMINISTRATIVE C [except 1980.452 ADMINISTRATIVE C 1(d)] of this subpart.

* * * * *

Dated: June 24, 1993.

**Bob J. Nash,**

*Under Secretary, Small Community and Rural Development.*

[FR Doc. 93–17228 Filed 7–20–93; 8:45 am]

BILLING CODE 3410–07–M

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## DEPARTMENT OF JUSTICE

### 8 CFR Part 3

**[AG Order No. 1764–93]**

### Executive Office for Immigration Review; Criminal Conviction Records

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the types of documents that are admissible in proceedings before an Immigration Judge to prove a criminal conviction. It expands the class of documents that will be accepted by an Immigration Judge, and it includes the use of abstracts of convictions and records which have been electronically transferred by individual states to the Immigration and Naturalization Service ("the Service"). These changes implement section 507 of the Immigration Act of 1990 (IMMACT).

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone, (703) 305–0470.

**SUPPLEMENTARY INFORMATION:** The types of documents that may be accepted by Immigration Judges to prove a criminal

conviction have been expanded. Section 507 of IMMACT amended the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3753(a)) by requiring that individual states that receive grants under the Omnibus Act provide, without fee to the Service, certified records of conviction of aliens who have been convicted of violating the criminal laws of the state. The types of records that will be provided to the Service to prove a criminal conviction may vary from state to state, and provisions have been made to recognize and accept different state documents in immigration proceedings.

A proposed rule concerning criminal conviction records was published on December 22, 1992 at 57 FR 60740. Nineteen comments were received concerning the proposed rule. The comments discussed both the overall effect of the rule, as well as specific suggestions for clarification. A discussion of the comments follows.

Many commenters supported the rule as proposed, but suggested that certain provisions needed clarification. Several commenters requested that the rule indicate that certification of abstracts by state officials may be made by means of a computer-generated signature and statement of authenticity submitted as part of the record. While the proposed rule did not expressly state how a certification of the record was to be made, it was anticipated that a computer-generated certification would be the method used by the state official. The final rule clarifies that any record of conviction or abstract that has been submitted by electronic means to the Service from a state or court record repository may be certified by means of a computer-generated signature and statement of authenticity.

In addition, the proposed rule limited the authority to certify the record to a state "law enforcement" official associated with the state's record repository. Several commenters noted that state officials who manage or maintain the record repositories are not always law enforcement officials. The Bureau of Justice Administration (BJA), which is charged with the administration of section 507 of IMMACT, agrees. Therefore, the reference to "law enforcement" official has been removed from the final rule. Certification may be provided by any state official who is associated with the state's repository of criminal justice records.

The final rule further clarifies that a record may be electronically transmitted to the Service from both the state record repository or the court record repository. Section 3.41(a)(5) provides that an abstract of a record of conviction is admissible if prepared either by the court in which the conviction was entered, or by a state official associated with the state's repository of criminal justice records. However, proposed paragraph (c)(1) referred only to the certification made by the state official associated with the record repository, and omitted reference to certification by an official associated with the court repository. This omission has been corrected, and the rule clarifies that both a state official and a court official may certify abstracts of records from their respective repositories.

One commenter suggested that the rule be expanded to include admission of official criminal history records, or "rap sheets". While a "rap sheet" may contain some evidence of a criminal conviction, it might not include the essential aspects of a record of conviction. Therefore, while an official criminal history record, or "rap sheet" may be admissible under paragraph (d) of the rule as some evidence of a criminal conviction, it lacks the essential protections that an abstract of conviction contains. The abstract, which requires specific and detailed information of a record of a criminal conviction, is intended to provide a reliable and accurate record of conviction. The abstract of conviction will originate directly from the state or court record repositories, and will be certified by both the state official who prepares the record, and the Service official who receives the record. These protections will ensure the completeness, accuracy and reliability of the records.

Commenters who objected to the rule as proposed argued that the rule would diminish the burden upon the INS to prove deportability by "clear, convincing and unequivocal evidence" by allowing documents other than the record of conviction to establish deportability. This is incorrect. The standards for establishing deportability have not been relaxed, nor has the burden of proof shifted from the government to the alien. While the rule sets forth the types of records that are admissible to prove a criminal conviction, and expands the types of documents which have traditionally been submitted to establish a criminal conviction, the burden remains with the Service to prove the underlying issue of deportability by "clear, convincing and unequivocal" evidence. To meet this burden of proof, it may be necessary for the Service to introduce evidence beyond the initial documents presented. It is the Immigration Judge who will determine if the records submitted meet the required standard of proof. As was stated when the proposed rule was published, the rule speaks to admissibility only; it does not state that the document or record is dispositive of the existence of a criminal conviction. For this reason, the title of the rule has been changed from "Record of Conviction" to "Evidence of Criminal Conviction" to more accurately reflect the content of the rule.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612. The rule meets the applicable standards provided in section 2(a) and 2(b)(2) of E.O. 12778.

**List of Subjects in 8 CFR Part 3**

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, title 8, chapter I of the Code of Federal Regulations is amended as follows:

## PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; Sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.41 is added to part 3 to read as follows:

**§ 3.41 Evidence of criminal conviction.**

In any proceeding before an Immigration Judge,

(a) Any of the following documents or records shall be admissible as evidence in proving a criminal conviction:

(1) A record of judgment and conviction;

(2) A record of plea, verdict and sentence;

(3) A docket entry from court records that indicates the existence of a conviction;

(4) Minutes of a court proceeding or a transcript of a hearing that indicates the existence of a conviction;

(5) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a state official associated with the state's repository of criminal justice records, that indicates the following: The charge or section of law violated, the disposition of the case, the existence

and date of conviction, and the sentence;

(6) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(b) Any document or record of the types specified in paragraph (a) of this section may be submitted if it complies with the requirement of § 287.6(a) of this chapter, or a copy of any such document or record may be submitted if it is attested in writing by an immigration officer to be a true and correct copy of the original.

(c) Any record of conviction or abstract that has been submitted by electronic means to the Service from a state or court shall be admissible as evidence to prove a criminal conviction if it:

(1) Is certified by a state official associated with the state's repository of criminal justice records as an official record from its repository or by a court official from the court in which conviction was entered as an official record from its repository. Such certification may be by means of a computer-generated signature and statement of authenticity; and,

(2) Is certified in writing by a Service official as having been received electronically from the state's record repository or the court's record repository.

(d) Any other evidence that reasonably indicates the existence of a criminal conviction may be admissible as evidence thereof.

Dated: July 13, 1993.

**Janet Reno,**

*Attorney General.*

[FR Doc. 93–17268 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 92 and 130

**[Docket No. 91–021–5]**

**RIN 0579–AA43**

### User Fees—Veterinary Diagnostics

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are establishing user fees for certain veterinary diagnostic services we provide. These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended. The effect of these regulations is to require certain persons to pay fees for services they receive.

We are also amending certain provisions of our current regulations for user fees to either make them consistent with this rule or to clarify their intended meaning. In addition, we are amending certain provisions of our current regulations for user fees that pertain to debtors who fail to pay the fees when due, to make them consistent with provisions of our overtime regulations.

**EFFECTIVE DATE:** September 1, 1993.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joan Arnoldi, Director, National Veterinary Services Laboratories, VS, APHIS, USDA, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010, (515) 239–8266.

**SUPPLEMENTARY INFORMATION:**

## Background

### *User Fees Authorized Under the Farm Bill*

The Food, Agriculture, Conservation and Trade Act of 1990, as amended, referred to below as the Farm Bill, authorizes the Secretary of Agriculture, among other things, to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance. (sec. 2509(c)(1) of the Farm Bill).

The Farm Bill further authorizes the Secretary to prescribe and collect fees to recover the costs of carrying out the provisions of 21 U.S.C. 114a, as amended which relate to veterinary diagnostics. (sec. 2509(c)(2) of the Farm Bill) 21 U.S.C. 114a concerns control and eradication of communicable livestock and poultry diseases. Section 2509(c)(5)(C)(ii) also provides procedures for the Secretary to follow in the case of non-payment of assessed fees, late payment penalties, or accrued interest. The section states that the Secretary shall suspend performance of services to persons who have failed to pay fees, late payment penalty, or accrued interest.

Section 2509(d) of the Farm Bill provides in addition that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out the provisions of section 2509.

### *Previously Published Regulations*

On August 7, 1991, we published a document in the **Federal Register** (56 FR 37481–37499, Docket No. 91–021) in which we proposed to amend 7 CFR part 354 and 9 CFR chapter I to establish user fees for certification, inspection and testing services we provide. We also proposed in that document to amend 9 CFR ch. I to establish user fees for veterinary diagnostic services we provide. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells, and to identify those organisms and agents.

On August 21, 1991, and September 24, 1991, documents making various corrections to our published proposal were published in the **Federal Register** (56 FR 41605 and 56 FR 48270).

We solicited comments concerning our proposal for a 30-day period ending September 6, 1991. We received 176 comments by that date. They were from shipping interests, both international and domestic, members of Congress, airlines, state governments, representatives of agricultural industries, importers, exporters, veterinarians, and producers.

After carefully considering all of the comments received, we published a final rule implementing collection of user fees for various inspection and quarantine services. The final rule was published in the **Federal Register** on January 9, 1992 (57 FR 755–773, Docket No. 91–135). However, we did not include in the final rule user fees proposed for veterinary diagnostic services. Instead, we stated that we would "consider further the comments we received on this issue and decide what action to take as soon as feasible."

### *Proposed Rule*

On March 22, 1993, we published a document in the **Federal Register** (58 FR 15292–15301, Docket No. 91–021–4) in which we proposed to charge user fees for certain veterinary diagnostic services, including providing certain diagnostic reagents, slide sets, and tissue sets. Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells, and to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests required to import or export animals or birds; (2) conducting diagnostic testing on tissue samples referred to the Animal and Plant Health Inspection Service (APHIS or Agency) by veterinarians, State animal health officials, or university representatives who want assistance in establishing or confirming a diagnosis (referred to in this document as reference assistance testing); and (3) providing certain diagnostic reagents, slide sets, and

tissue sets. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostic service.

We also proposed to amend the regulations to add definitions of "National Veterinary Services Laboratories (NVSL)" and "National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL)," which are the laboratories where we provide the veterinary diagnostic services covered by this proposed rule, and definitions of "Diagnostic reagent," "Privately operated permanent import-quarantine facility," "Reference assistance testing," and "State animal health official".

In addition, we proposed to amend certain provisions of our current user fee regulations for service provided under title 9, Code of Federal Regulations, to either make them consistent with what we are proposing here or to clarify their intended meaning. We also proposed to amend certain provisions of our current regulations that pertain to debtors who fail to pay fees when due, to make them consistent with certain provisions of our overtime regulations. Further, we proposed to make certain nonsubstantive technical changes.

We solicited comments concerning our proposal for a 30-day comment period ending April 21, 1993. We received 16 comments by that date. They were from veterinarians, veterinary medical associations, and representatives of State and Federal government agencies, including State universities. We carefully considered all of the comments we received. They are discussed below by topic.

*Cost of Doing Business*

Some commenters stated that the fees would increase their cost of doing business. We realize that payment of the user fees will increase the up-front cost of doing business. Various persons are currently subsidized by the taxpayers in general, in that those who benefit from NVSL services do not directly pay for the services. Requiring persons to pay a fee for the services they receive would eliminate the subsidy, general appropriations from taxes would no longer be needed, and costs to taxpayers in general would be reduced.

*General Economic Situation*

Many comments objected in general terms to all the proposed APHIS user fees. Many maintained the proposed APHIS user fees would be detrimental to the livestock industry in general, and individual businesses in particular. Some comments proposed that we exempt certain industries or classes of users from the proposed user fees. Among those mentioned were pet (companion animal) owners. Commenters argued that we should consider the current economic situation, both in the United States and abroad, and the financial health of affected businesses and industries, before adopting APHIS user fees. In addition, several commenters mentioned that NVSL is the sole source of certain tests and reagents.

We are not exempting any industries or businesses from APHIS user fees based on these comments. Because of budget constraints, we do not have the option either not to charge user fees, or to charge user fees which recover less than the full cost of providing a service. If we did so, we would not collect enough money to support the service. However, we have attempted to minimize the cost of our services, thereby keeping APHIS user fees at the lowest possible level.

*Alternate Funding for NVSL Services*

Several comments suggested that NVSL be funded either from general tax revenues, or with funds transferred from other United States Department of Agriculture (USDA) agencies.[1] Commenters stated that the Federal government has a "responsibility to provide a centralized diagnostic laboratory" and that NVSL is for "the common good."

APHIS's appropriation includes funds for NVSL to develop new technology. However, APHIS's appropriation does not include enough funds to continue to provide all NVSL services to the public without charge. Instead, APHIS has been authorized by statute, as explained above, to charge user fees for certain NVSL services. Any increase in our general appropriation is a Congressional prerogative over which we have no control.

*Quality and Quantity of NVSL Services, Including Disease-Monitoring*

Many commenters stated that charging user fees for NVSL services would reduce the quality and quantity of services provided, ultimately harming disease identification and control efforts. Several commenters mentioned specific diseases, such as Eastern equine encephalomyelitis (EEE) and salmonellosis. We have carefully considered these comments, but have determined not to make any changes based on them.

The NVSL does provide services beyond merely performing tests and supplying reagents. Among other things, it collects data and compiles statistics on the incidence of various livestock diseases in the United States, acts as the final arbiter on test results, and helps prevent the introduction of dangerous foreign (exotic) animal diseases into the United States.

It is evident from letters we received that many commenters assume NVSL will be charging APHIS user fees for tests and reagents for program diseases. Program diseases are diseases targeted by a current APHIS program to control or eradicate various domestic diseases or pests. As we stated in our proposal, we do not intend to charge an APHIS user fee for tests and diagnostic reagents provided in the United States in connection with program diseases. NVSL compiles statistics showing the incidence of various diseases in the United States, based on results of tests it performs. According to the commenters, if NVSL charges for program disease tests, people will stop using NVSL for these tests and NVSL will no longer get the data it needs to compile its statistics. However, because APHIS will not charge user fees for program disease tests or for program disease reagents, the number of requests received for these services should not be affected. For example, salmonella, which was mentioned by several commenters, is the subject of several APHIS programs. Samples submitted for testing in connection with any of those programs will not be subject to an APHIS user fee. In addition, certain diseases, such as EEE, which are not now program diseases, would be considered program diseases if there were an outbreak of the disease. In those situations, we would not charge a user fee for testing.

Some commenters also stated that NVSL was the only source of standardized reagents, and that the proposed user fees would encourage other laboratories to produce reagents, which might not be standard and which would thereby jeopardize efforts to control disease. Several other commenters expressed similar general concerns that private and State laboratories would provide services as an option to NVSL, but that doing so would put a strain on them and the services provided would be substandard. One commenter was

[1] This commenter also suggested all USDA research units be phased out, and the bulk of their funding made available to land grant colleges for research. We have not discussed this comment in this document. The allocation of Federal research dollars was not within the scope of our proposed regulations.

concerned that NVSL would eventually be supplanted by private laboratories.

We are not making any changes in the proposed regulations based on these comments. APHIS is authorized to provide various veterinary services to the public, and it is through NVSL that many of these services are provided. However, APHIS is not required by law to provide services. Neither is there any statute which prohibits private laboratories or other entities from providing services in competition with NVSL.

*Missing Fees*

One commenter alerted us that we did not include a user fee for testing the efficacy and possible corrosiveness of disinfectants. Another commenter informed us that there is no fee for "cultures (non-reagent related)." If we determine in the future that user fees for these, or any other services are needed, we will publish proposed fees, for public comment, in the **Federal Register**.

A commenter also pointed out that there is no separate charge for bacterial isolation and identification, as opposed to bacterial identification alone. In addition, this commenter questioned how the user fee would be assessed for testing samples received for isolation and identification. We are making no changes based on these comments. We believe our two proposed user fees for "bacterial identification/isolation, routine" and "bacteriology requiring special characterization" (see proposed § 130.16(a)(1)), cover the testing. Normally, isolation and identification are done for every sample. Our user fees, as our proposed rule states, will be based on the number of tests done.

*Fees To Be Changed*

One commenter stated that our proposed reagent fees are too high, and that we should adopt a "set price" for each class of reagents, regardless of the agent involved. Another commenter suggested that, in general, our proposed user fees for services concerning culture identification might not be high enough because lab personnel cannot know in advance exactly how much work will be required.

We have carefully considered these comments, but have determined not to make any changes in our proposed regulation. We have carefully calculated all of our proposed user fees to correctly reflect the amount, type, and duration of each service required. We took into account variations in the time needed to provide a service by determining the average time necessary.

As is the case with all other APHIS user fees, we intend to review, at least annually, the user fees we are adopting in this document. We will publish any necessary adjustments in the **Federal Register**. We do not intend to collect user fees in excess of actual costs.

This same commenter also suggested that we adopt a single fee for each complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization test (VN). This is in contrast to the tiered fees we proposed. Under our proposal, there would be one fee for the first CF, HI, or VN test on a sample, and a second, different, fee for each additional test of the same type on the same sample. The user fee for additional tests would be lower than the user fee for the first test.

As we explained in our proposed regulation, CF, HI, and VN tests are conducted to detect many different diseases. A single sample may be tested many times for different diseases, each time using the same type of test. A given amount of time and effort is required to prepare a sample for the first test. However, once the sample has been prepared for the first test, less time and effort is necessary to ready it for each additional test of the same type. Because of this, costs are lower for each additional test. Therefore, we proposed one user fee for the first CF, HI, or VN test on a sample, and another, lower, user fee for each additional test of the same type on the same sample.

We believe this reasoning is still valid. We are therefore not making any changes in the regulations based on this comment.

*Payment Methods*

One commenter suggested that we allow State agencies to pay for user fees with purchase orders or by setting up a "charge account" with monthly billing. In conjunction with this suggestion, the commenter also stated that, if we adopt the suggestion, we should also exempt State agencies from § 130.51 (b)(3) and (b)(4). Section 130.51(b)(3) and (b)(4) state that APHIS will withhold test results and services if payment is not made or is inadequate or unacceptable.

We have carefully considered this comment and determined that no changes are necessary. Our proposed payment system includes provisions for billing. We included these provisions to accommodate State agencies and others who cannot prepay. If, after these user fees are effective, we determine that a different approach would be better, we will publish proposed amendments for public comment in the **Federal Register**.

*Miscellaneous*

One commenter asked whether conjugates provided by NVSL are concentrate or dilute. Our answer is that all NVSL conjugates are concentrate.

Another commenter questioned why "production agriculture" must pay user fees, and cited restaurants as receiving much of the income spent on food. We agree the commenter's implied statement that other individuals and businesses in the marketing chain benefit from NVSL services. However, they benefit indirectly only—NVSL does not provide any direct services to them. Under these circumstances, it is not practical for us to collect user fees from them, or even to calculate what the appropriate user fee might be. For these reasons we are not making any changes to the proposed regulation based on this comment.

We are making three editorial changes to the regulations we proposed. We are adding the words "agents or" to our proposed definition of "*Diagnostic reagent,*" so the definition reads "*Diagnostic reagent.* Substances used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction." We believe this wording is clearer and more accurate. We are also, in proposed new § 130.15, changing "Virus isolation (OP)" to read "Virus isolation (Oesophageal/pharyngeal)." Spelling out this term, rather than abbreviating it, eliminates any possibility of misunderstanding. Finally, in proposed §§ 130.14(b), 130.15(b), and 130.16(b), we have clarified that reimbursable overtime must be paid for the service of performing each test, when service is asked for on a Sunday or holiday, or at any other time outside the normal tour of duty of the employee.

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

**Executive Order 12291 and Regulatory Flexibility Act**

In accordance with Executive Order 12291, it has been determined that this rule is part of a series of documents which are being considered as a "major rule." This final rule is one of several rules which require certain persons to pay user fees for APHIS services they receive. We have already published, in three separate documents, final rules adopting user fees for various passengers and means of conveyance. One final rule covered user fees for commercial vessels, commercial trucks,

commercial railroad cars, and passengers on commercial aircraft arriving in the United States from outside the country. It was published April 12, 1991 (56 FR 14837–14846, Docket No. 91–028), and was effective May 13, 1991. The second final rule covered user fees for passengers on commercial airlines departing Hawaii and Puerto Rico for other parts of the United States. It was published April 23, 1991 (56 FR 18496–18502, Docket No. 91–054). It was withdrawn in another document published April 21, 1992 (57 FR 14475, Docket No. 91–142). The third final rule was published January 9, 1992 (57 FR 755–773, Docket No. 91–135), and was effective February 9, 1992. It covered user fees for services provided to commercial aircraft entering the customs territory of the United States, services related to the issuance of phytosanitary certificates for plants and plant products being exported from the United States, and services related to the export or import of animals or birds.

The Final Regulatory Impact Analysis indicates that the rules currently in effect, along with the regulations made final in this document, will provide total savings to taxpayers of $129.9 million annually. The discounted value of this amount is estimated at about $532.6 million over 5 years. The veterinary diagnostic fees alone, as included in this final rule, will contribute approximately $988,000 per year, or less than 1 percent of the total savings. These savings will have a discounted value of approximately $5 million over 5 years. The Regulatory Flexibility Act requires that APHIS specifically consider the economic impact of imposing user fees on "small" affected entities. The number of entities which may be qualified as small in each category is not available. Approximately 125,000 diagnostic and reference assistance tests are performed annually at APHIS laboratories. These tests are performed for animal importers and exporters, veterinarians, State and Federal agencies and laboratories, commercial laboratories, educational institutions, and foreign governments, most of whom are not small entities. However, the economic impact of user fees on small entities is expected to be minor since the fee represents a small fraction of the total operating costs for each small entity, and a small amount of the total cost of importing an animal into the United States.

Our final Regulatory Impact Analysis is available for inspection at USDA, room 1141, South Building, 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 the document are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**Executive Order 12372**

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

**Executive Order 12606**

We have analyzed this final rule in accordance with Executive Order 12606, and have determined that it has no potential impact on family well-being. We have determined that this rule: Will not affect the stability of the family, and particularly, the marital commitment; will not affect the authority and rights of parents in the education, nurture, and supervision of their children; will not help or hinder the family to perform its functions; will not substitute governmental activity for family functions; and will not have any significant effect on family earnings. We have also determined that the benefits of this action justify any impact it may have on the family budget, and that this activity cannot be carried out by a lower level of government or by the family itself. This rule sends no message, intended or otherwise, to the public concerning the status of the family, or to young people concerning the relationship between their behavior, their personal responsibility, and the norms of our society.

**Executive Order 12778**

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

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget.

**List of Subjects**

*9 CFR Part 92*

Animal disease, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

*9 CFR Part 130*

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping regulations, Tests.

Accordingly, we are amending 9 CFR parts 92 and 130 as follows:

## PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 is revised to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.106, paragraph (d)(2) is revised to read as follows:

**§ 92.106 Quarantine requirements.**

* * * * *

(d) *Charges for services.* * * *

(2) All applicable user fees, as listed in part 130 of this chapter; and

* * * * *

## PART 130—USER FEES

3. The authority citation for part 130 is revised to read as follows:

**Authority:** 21 U.S.C. 114a, 136, and 136a; 7 CFR 2.17, 2.51, and 371.2(d).

4. In § 130.1, the following definitions are added, in alphabetical order, to read as follows:

**§ 130.1 Definitions.**

* * * * *

*Diagnostic reagent.* Substances used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction.

* * * * *

*National Veterinary Services Laboratories (NVSL).* The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

*National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL).* The National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory, located in Greenport, New York.

* * * * *

*Privately operated permanent import-quarantine facility.* Any permanent facility approved under 9 CFR part 92 to quarantine animals or birds, except facilities operated by APHIS.

*Reference assistance testing.* Tests conducted by APHIS at the request of a veterinarian, state animal health official, or university, to either establish or confirm a diagnosis.

* * * * *

*State animal health official.* The State official responsible for livestock and poultry disease control and eradication programs.

* * * * *

5. In § 130.2, the text of paragraph (a) preceding the table is revised to read as follows:

**§ 130.2 User fees for individual animals and birds quarantined in APHIS Animal Import Centers.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for the following user fees, which include standard care, feed, and handling, and which must be paid for each animal or bird quarantined in an Animal Import Center[5]:

* * * * *

6. In § 130.3, the text of paragraph (a) preceding the table is revised to read as follows:

**§ 130.3 User fees for exclusive use of buildings at APHIS Animal Import Centers.**

(a) An importer may, at his or her option, occupy entire quarantine buildings at the Animal Import Centers specified below. The person for whom the service is provided and the person requesting the service are jointly and severally liable for the user fee which will be charged for each building as follows:

* * * * *

7. Section 130.4 is revised to read as follows:

**§ 130.4 User fees for services at privately operated permanent import-quarantine facilities.**

A daily user fee of $49.25 must be paid for each animal quarantined in a privately operated permanent import-quarantine facility. The person for whom the service is provided and the person requesting the service are jointly and severally liable for this user fee.

8. In § 130.5, paragraph (a) is revised to read as follows:

**§ 130.5 User fees for services at privately operated temporary import-quarantine facilities.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the user fee for each animal quarantined in a privately operated temporary import-quarantine facility.

* * * * *

9. In § 130.6, the text of paragraph (a) preceding the table and the text of paragraph (b)(1) preceding the table are revised to read as follows:

**§ 130.6 User fees for endorsing export health certificates.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export health certificate requested[7] for the following types of animals, regardless of the number of animals covered by the certificate:

* * * * *

(b)(1) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the following user fees for each export certificate requested for animals and birds, depending on the number of animals or birds covered by the certificate and the number of tests required:

* * * * *

11. In § 130.7, paragraph (a), the introductory text is revised to read as follows:

**§ 130.7 User fees for inspection and supervision services provided within the United States for export animals or birds.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for paying the user fees for the following APHIS services provided within the United States for export animals or birds:

* * * * *

12. In part 130, new §§ 130.14 through 130.18 are added to read as follows:

**§ 130.14 User fees for tests performed at NVSL.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each test listed in this paragraph performed at NVSL in connection with the importation or exportation of animals or birds. All user fees in this paragraph are per test, unless stated otherwise:

| Test | User fee |
|---|---|
| Agar gel immunodiffusion | $4.75 |
| Buffered acidified plate antigen presumptive | 3.50 |
| Card | 2.00 |
| Competitive enzyme linked immunosorbent assay | 4.75 |
| Complement fixation (includes Complement fixation-ovis)[1] | 9.00 |
| Enzyme linked immunosorbent assay | 4.75 |
| Hemagglutination inhibition (includes Hemagglutination inhibition-5)[1] | 7.50 |
| Histopathology | [2]8.50 |
| Indirect fluorescent antibody | 9.00 |
| Latex agglutination | 4.75 |
| Mercaptoethanol | 3.50 |
| Microscopic agglutination | ([3]) |
| Plaque neutralization | 7.50 |
| Parasitology | 17.00 |
| Plate | 3.50 |
| Rivanol | 3.75 |
| Tube agglutination (includes tube agglutination melitensis) | 3.50 |
| Virus neutralization[1] | 7.50 |

[1] The user fees listed are for the first complement fixation (CF), hemagglutination inhibition (HI), and virus neutralization (VN) test performed on a sample. The user fee for each additional test of the same type (CF, HI, or VN) performed on the same sample is 20% of the stated fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests, one HI test and one VN test are performed on the same sample, the user fees are $9.00 for the first CF test, $7.50 for the HI test, $7.50 for the VN test, and, for the second CF test, $2.00, or $1.80 (20% of $9.00), rounded up to the nearest quarter of a dollar.

[2] Per slide.

[3] $10 per accession, plus $2.00 for each serovar in excess of five serovars per accession.

(b) If a test must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for performing each test, in addition to the user fee listed in paragraph (a) of this section.

**§ 130.15 User fees for tests performed at FADDL.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each test listed in this paragraph performed at FADDL in connection with the importation or exportation of animals or birds. All user fees in this paragraph are per test, unless stated otherwise:

| Test | User fee |
|---|---|
| Agar gel immunodiffusion | $13.50 |
| Complement fixation[1] | 30.50 |
| Direct immunofluorescent antibody | 9.50 |
| Enzyme linked immunosorbent assay | 11.00 |

[5] APHIS Animal Import Centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 92 of this chapter.

[7] An export certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export certificates as a service to the public.

| Test | User fee |
|---|---|
| Fluorescent antibody neutralization | 22.00 |
| Histopathology | [2] 20.75 |
| In-vivo safety tests | 4,177.00 |
| Indirect fluorescent antibody | 21.50 |
| Latex agglutination | 9.25 |
| Virus isolation | 77.75 |
| Virus isolation (Oesophageal/pharyngeal) | 80.00 |
| Virus isolation in embryonated eggs | 163.75 |
| Virus neutralization [1] | 22.00 |

[1] The user fees listed are for the first complement fixation (CF) and virus neutralization (VN) test performed on a sample. The user fee for each additional test of the same type (CF or VN) performed on the same sample is 20% of the stated user fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests and one VN test are performed on the same sample, the user fees are $30.50 for the first CF test, $22.00 for the VN test, and, for the second CF test, $6.25, or $6.10 (20% of $30.50) rounded up to the nearest quarter of a dollar.

[2] Per slide.

(b) If a test must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for performing each test, in addition to the user fee listed in paragraph (a) of this section.

**§ 130.16 User fees for reference assistance testing.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each reference assistance test listed in this paragraph. All user fees in this paragraph are per test, unless stated otherwise:

| Test | User fee |
|---|---|
| (1) Bacterial identification tests: | |
| Bacterial identification/isolation, routine | $15.00 |
| Bacteriology requiring special characterization | 25.00 |
| Leptospira cultures | 25.00 |
| Leptospira serotyping | 75.00 |
| Phage typing | 10.00 |
| Plasmid typing | 25.00 |
| Salmonella serotyping | 20.00 |
| (2) Toxicology tests: | |
| GC/MS organic compound—Screen | 106.50 |
| Confirmation | 31.00 |
| ICP metals—Screen | 26.25 |
| Confirmation | 6.00 |
| Mycotoxin screen | 30.75 |
| Selenium | 30.50 |
| Pesticide—Screen | 34.25 |
| Quantitation | 47.50 |
| Other toxicant—Screen | 39.75 |
| Quantitation | 39.75 |
| (3) Other tests: | |
| Complement fixation (includes complement fixation-ovis) [1] | 9.00 |
| Agar gel immunodiffusion | 4.75 |
| Hemagglutination inhibition (includes hemagglutination-5) [1] | 7.50 |
| Histopathology | [2] 8.50 |
| Indirect fluorescent antibody | 9.00 |
| Parasitology | 17.00 |
| Virus isolation | 29.75 |
| Virus neutralization | 7.50 |

[1] The user fees listed are for the first complement fixation (CF), hemagglutination inhibition (HI), and virus neturalization (VN) test performed on a sample. The user fee for each additional test of the same type (CF, HI, or VN) performed on the same sample is 20% of the stated user fee, rounded up to the nearest quarter of a dollar. For example, if two CF tests, one HI, and one VN test are performed on the same sample, the user fees are $9.00 for the first CF test, $7.50 for the HI test, $7.50 for the VN test, and, for the second CF test, $2.00, or $1.80 (20% of $9.00) rounded up to the nearest quarter of a dollar.

[2] Per slide.

(b) If a test must be conducted on a Sunday or holiday, or at any other time outside the regular tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for performing each test, in addition to the user fee listed in paragraph (a) of this section.

**§ 130.17 User fees for diagnostic reagents, slide sets, and tissue sets.**

(a) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each diagnostic reagent listed in this paragraph and obtained from NVSL:

| Diagnostic reagent | Unit (ml.) | Fee/unit |
|---|---|---|
| Avian adenovirus 127: | | |
| Antigen | 2 | $39.50 |
| Antiserum | 2 | 21.75 |
| Avian encephalomyelitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Avian influenza: | | |
| Antigen | 2 | 8.75 |
| Antiserum | 6 | 51.00 |
| Avian paramyxovirus-2: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 2 | 39.50 |
| Antiserum | 2 | 21.75 |
| Avian paramyxovirus-3: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 2 | 39.50 |
| Antiserum | 2 | 21.75 |
| Avian reovirus: | | |
| Virus | 0.6 | 5.25 |
| Bluetongue: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine coronavirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine herpes virus: | | |
| Virus: | | |
| Type 1 | 0.6 | 5.25 |
| Type 2 | 0.6 | 5.25 |
| Type 4 | 0.6 | 5.25 |
| Bovine herpes virus continued: | | |
| Antiserum: | | |
| Type 1 | 2 | 83.50 |
| Type 2 | 2 | 83.50 |
| Type 4 | 2 | 83.50 |
| Conjugate: | | |
| Type 1 | 1 | 19.25 |
| Type 2 | 1 | 19.25 |
| Type 4 | 1 | 19.25 |
| Positive control serum: | | |
| Type 1 | 2 | 4.50 |
| Type 2 | 2 | 4.50 |
| Bovine papular stomatitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine parvovirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 4.50 |
| Bovine respiratory syncytial virus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 4.50 |
| Bovine rotavirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Bovine viral diarrhea: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 4.50 |
| Brucella canis: | | |
| Antigen | 2 | 8.25 |
| Brucella ovis: | | |
| Antigen | 2 | 5.50 |
| Chlamydia psittaci: | | |
| Agent | 0.6 | 5.25 |
| Antiserum | 1 | 21.75 |
| Antigen | 1 | 5.25 |
| Conjugate | 1 | 19.25 |
| CF modifying factor | 1 | 11.50 |
| Contagious ecthyma: | | |
| Virus | 0.6 | 5.25 |
| CF antigen | 1 | 7.00 |
| Antiserum | 2 | 5.25 |
| Conjugate | 1 | 19.25 |
| Duck viral enteritis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Conjugate | 1 | 31.25 |
| Encephalomyo-carditis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Epizootic hemorrhagic disease: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Equine adenovirus: | | |
| Virus | 0.6 | 5.25 |

| Diagnostic reagent | Unit (ml.) | Fee/ unit |
|---|---|---|
| Antiserum | 2 | 11.50 |
| Conjugate | 1 | 24.00 |
| Equine herpes type 1: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 11.50 |
| Conjugate | 1 | 24.00 |
| Equine herpes type 2: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 11.50 |
| Equine herpes type 3: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 11.50 |
| Equine influenza: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Equine viral arteritis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 5 | 48.25 |
| Hemagglutinating encephalomyelitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Hog Cholera: | | |
| Tissue set | (1) | 76.75 |
| Infectious bronchitis virus: | | |
| Virus | 0.6 | 4.50 |
| Antiserum | 2 | 21.75 |
| Infectious bursal disease: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 1 | 8.00 |
| Antiserum | 2 | 21.75 |
| Infectious laryngotracheitis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 21.75 |
| Johnin: | | |
| OT | 10 | 12.25 |
| PPD | 2 | 10.75 |
| Lepto FA: | | |
| Conjugate | 1 | 19.25 |
| Flazo-orange | 3 | 6.00 |
| Leptospira: | | |
| Antigen | 10 | 20.00 |
| Antiserum | 2 | 4.50 |
| Lepto transport medium | 10 | 3.00 |
| Newcastle disease: | | |
| Virus | 0.6 | 5.25 |
| Antigen | 2 | 39.50 |
| Antiserum | 2 | 21.75 |
| Parainfluenza-3: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 83.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Pasteurella: | | |
| Antigen | 1 | 3.50 |
| Antiserum | 1 | 10.00 |
| Porcine adenovirus (AV): | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Porcine parvovirus (PPV): | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Porcine reovirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Porcine rotavirus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Psittacine herpes virus: | | |
| Virus | 0.6 | 5.25 |
| Antiserum (standard) | 2 | 21.75 |
| Conjugate | 1 | 24.00 |
| Quail bronchitis virus: | | |
| Virus | 0.6 | 5.25 |
| Swine influenza: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |
| Transmissible gastroenteritis: | | |
| Virus | 0.6 | 5.25 |
| Antiserum | 2 | 57.50 |
| Conjugate | 1 | 19.25 |
| Positive control serum | 2 | 6.25 |

[1] 1 set.

(b) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees for each diagnostic reagent, slide set, or tissue set listed in this paragraph and obtained from NVSL or FADDL for delivery outside of the United States:

| Diagnostic reagent, slide set, tissue set | Unit (ml.) | Fee/ unit |
|---|---|---|
| African swine fever— | | |
| Immunosmophoresis antigen | 1 | 60.75 |
| Slide set for direct fluorescent antibody test | (1) | 23.00 |
| Tissue set | (1) | 76.75 |
| Anti-foot-and-mouth disease antigen, Guinea pig origin | 1 | 12.75 |
| Bovine antiserum, any agent | 1 | 2.50 |
| Fluorescent antibody conjugate | 1 | 48.50 |
| Foot-and-mouth disease anti-VIAA serum | 1 | 5.00 |
| Foot-and-mouth disease virus associated antigen | 1 | 36.75 |
| Monoclonal antibodies, mouse ascitic fluid | 1 | 14.75 |
| Ovine antiserum, any agent | 1 | 2.00 |
| Swine antiserum, any agent | 1 | 2.00 |

[1] 1 set.

**§ 130.18 User fees for sterilization by gamma radiation.**

The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of a user fee of $427.75 per can for sterilization by gamma radiation.

13. In § 130.50, paragraphs (a)(1) and (a)(2) are revised; paragraph (a)(3) is amended by removing "and" at the end of the paragraph; paragraph (a)(4) is amended by removing the period at the end of the paragraph and adding a semicolon in its place; and new paragraphs (a)(5) and (a)(6) are added to read as follows:

**§ 130.50 Payment of user fees.**

(a) * * *

(1) User fees for animals and birds in an Animal Import Center or privately operated permanent import-quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid at the time the animals or birds are released from quarantine;

(2) User fees for animals or birds in privately-operated temporary import-quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid at the time the animals or birds are released from quarantine.

* * * * *

(5) User fees for tests, other than reference assistance tests, on samples submitted to NVSL or FADDL, and user fees for diagnostic reagents, slide sets, tissue sets, and sterilization by gamma radiation, must be paid when the test, diagnostic reagent, slide set, tissue set, or sterilization is requested, unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed; and

(6) User fees for reference assistance tests must be paid when billed.

* * * * *

14. In § 130.51, paragraphs (a) and (c) are revised; paragraph (b)(1) is amended by removing the "and" at the end of the paragraph; paragraph (b)(2) is amended by removing the period at the end of the paragraph and adding a semicolon in its place; and new paragraphs (b)(3) and (b)(4) are added to read as follows:

**§ 130.51 Penalties for nonpayment or late payment of user fees.**

(a) If any person for whom the service is provided or the person requesting the service fails to pay when due, any debt to APHIS, including any user fee due under title 7 or title 9, Code of Federal Regulations, then:

(1) Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person requesting the service has not paid the late payment penalty or

interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored;

(2) APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the amount due;

(3) The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt;

(4) Cash payments will be accepted only at a location designated by the APHIS employee during normal business hours; and

(5) Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 90 days after date of bill;

(iii) The person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) * * *

(3) If a user fee is due for a test conducted by APHIS, APHIS will not release the test result or any endorsed certificate; and

(4) If a user fee is due for a diagnostic reagent, slide set, tissue set, or sterilization by gamma radiation, APHIS will not release the diagnostic reagent, slide set, tissue set, or sterilized material.

(c) If for unbilled user fees, the user fees are unpaid 30 days after that date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

* * * * *

Done in Washington, DC, this 15th day of July 1993.

**Eugene Branstool,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 93-17300 Filed 7-20-93; 8:45 am]

BILLING CODE 3410-34-P

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Part 1700

## Requirements for Child-Resistant Packaging; Products Containing Loperamide

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** Under the Poison Prevention Packaging Act of 1970, the Commission issues a rule requiring child-resistant packaging for products containing more than 0.045 milligrams (mg) of loperamide in a single package. These requirements are issued because the Commission has determined that child-resistant packaging is required to protect children under 5 years of age from serious personal injury and serious illness resulting from ingesting loperamide. Loperamide is used as an antidiarrheal medication that is marketed in both prescription and over-the-counter forms.

**EFFECTIVE DATE:** The rule is effective on August 20, 1993.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Bogumill, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0400.

**SUPPLEMENTARY INFORMATION:**

### A. Background

*1. Relevant Statutes and Regulations*

The Poison Prevention Packaging Act of 1970 (the "PPPA"), 15 U.S.C. 1471-1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance. Special packaging, also referred to as "child-resistant packaging," is defined as packaging that is (1) designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for normal adults to use properly. (It does not mean, however, packaging which all such children cannot open, or obtain a toxic or harmful amount from, within a reasonable time.) Under the PPPA, effectiveness standards have been established for special packaging (16 CFR 1700.15), as has a procedure for evaluating the effectiveness (§ 1700.20). Regulations have been issued requiring special packaging for a number of household products (§ 1700.14). The findings that the Commission must make in order to issue a standard requiring child-resistant ("CR") packaging for a product are discussed below in Section D of this notice. For the purposes of the PPPA, the amount of a substance "in a single package" that triggers the requirement to place the product in CR packaging refers to the total amount in a single retail unit of the substance.

One of the categories of products for which CR packaging is required is prescription drugs intended for oral administration to humans, with specified exemptions. 16 CFR 1700.14(a)(10). When the FDA releases a drug from prescription requirements and the drug can then be bought over-the-counter ("OTC"), the drug is no longer subject to the child resistant packaging requirements for prescription drugs.

Where prescription drugs are subject to a special packaging standard, section 4(b) of the PPPA allows such products to be sold in non-CR packaging only when (1) directed by the prescribing medical practitioner or (2) requested by the purchaser. 15 U.S.C. 1473(b).

For nonprescription (over-the-counter, or "OTC") products subject to special packaging standards, section 4(a) of the PPPA allows the manufacturer or packer to package the product in non-CR packaging only if (1) the manufacturer (or packer) also supplies the substance in CR packages and (2) the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a). If the package is too small to accommodate this label statement, the package may bear a label stating: "Package not child-resistant." 16 CFR 1700.5(b). The right of the manufacturer or packer to market a single size of the product in noncomplying packaging under these conditions is termed the "single-size exemption."

The Commission may restrict the right to market a single size in noncomplying packaging if the Commission finds that the substance is not also being supplied in popular size packages that comply with the standard. 15 U.S.C. 1473(c). In this case, the Commission may, after giving the manufacturer or packer an

opportunity to comply with the purposes of the PPPA and an opportunity for a hearing, order that the substance be packaged exclusively in CR packaging. To issue such an order, the Commission must find that the exclusive use of special packaging is necessary to accomplish the purposes of the PPPA.

*2. Loperamide*

Loperamide is an antidiarrheal medication that was first marketed by its patent holder in 1976 as a prescription drug. A capsule preparation of loperamide is available only by prescription and, since this is an oral prescription drug for humans, is required to be in CR packaging. In 1988, however, the Food and Drug Administration granted OTC status to a caplet (formulation ingredients compressed into the shape of a capsule) containing the same amount of loperamide as the prescription product and to a liquid preparation. These forms of the drug are marketed OTC in CR packaging by the original manufacturer.

The patent for loperamide expired in January of 1990, and other manufacturers may now apply to FDA for approval to make and market loperamide. Additional suppliers have approval to market liquid and solid OTC preparations, containing the same amount of loperamide as the original manufacturer's product.

Loperamide is structurally related to the opium alkaloids and acts by slowing intestinal motility and by reducing stomach and intestinal secretions. Loperamide is not recommended for children less than 2 years of age, as these children appear to be more sensitive to the drug's central nervous system (CNS) effects than are adults. The drug should not be used for any age group if diarrhea is accompanied by fever greater than 101°F or when blood appears in the stool. To prevent toxic accumulation of the drug, loperamide should be used with caution in individuals with liver disorders. Loperamide should not be used for more than 2 days, unless directed by a physician.

The maximum daily nonprescription dosage of loperamide is 8 milligrams (mg) for adults, 6 mg for children 9 to 11 years of age, 4 mg for children 6 to 8 years of age, and 3 mg for children 2 to 5 years of age. Currently, liquid OTC loperamide contains 1 mg of loperamide per 5 milliliters (ml) of liquid and the OTC caplet form contains 2 mg of loperamide per caplet. The original OTC loperamide products on the market are in CR packaging, as are other products that have come on the market. (Ref. No. 1.)

After considering the toxicity of loperamide and its availability in the home, the Commission proposed a rule under the PPPA to require special packaging for products containing more than 0.045 mg of loperamide in a single package. 57 FR 47020 (Oct. 14, 1992). The notice of proposed rulemaking provided a 75 day comment period. The Commission received only one comment which came from the American Society of Hospital Pharmacists ("ASHP") and supported the proposed rule. ASHP's letter stated that ASHP believed that products containing more than 0.045 milligrams of loperamide in a single package are hazardous to children and should be in child-resistant packaging. (Ref. No. 5.)

**B. Toxicity**

Animal and human pharmacological and toxicological data show that overdosage of loperamide can cause stomach and intestinal irritation (nausea, vomiting, abdominal pain, and constipation), abdominal distention and obstruction of the bowel, CNS effects (drowsiness, dizziness, muscular spasms, and convulsions), respiratory depression (periodic cessation of breathing, cyanosis, and coma), and death. In case of overdosage, activated charcoal and washing out the stomach are recommended. The patient should be frequently monitored for CNS and respiratory depression because of the prolonged action of loperamide. If signs of CNS or respiratory depression are present, naloxone, a drug which reverses the depressant effects of narcotics, should be administered.

The majority of the incidents of loperamide toxicity reported in the scientific literature occurred in foreign countries and involved the intentional administration of loperamide to children. The symptoms of overdosage ranged from nausea and dizziness to severe and life-threatening effects, including respiratory depression, coma, convulsions, and bowel obstruction and perforation. There are 11 deaths of children under age 5 reported.[1] The smallest dose reported (measured as mg of loperamide per kilogram (kg) of body weight) that resulted in adverse symptoms was 0.045 mg/kg; this (single oral) dose caused bowel obstruction with stool retention for 7 days in a 1-year-old child. (Ref. No. 1.)

The CPSC Children and Poisoning ("CAP") database for 1978 through April 1993 shows 12 ingestions of loperamide by children under 5 years of age treated in hospital emergency rooms participating in the National Electronic Injury Surveillance System ("NEISS"). Four of the children were admitted to the hospital. (Ref. No. 7.)

The American Association of Poison Control Centers' National Data Collection System ("AAPCC") includes cases of exposure reported by participating poison control centers. For 1990, 505 accidental ingestions of loperamide by children under 5 years of age were reported. Of these, 198 were seen by physicians and 75 experienced mild effects (symptoms resolved without treatment) to moderate effects (some medical treatment required). No life-threatening effects or fatalities were attributed to loperamide from this database. (Ref. Nos. 1 & 7.)

**C. Level for Regulation**

For incidents where the amount of loperamide ingested was known, severe adverse respiratory effects (periodic cessation of breathing, cyanosis, and coma), CNS effects (drowsiness, muscular spasms, and convulsions), and/or gastrointestinal disturbances (abdominal distention, bowel obstruction, and intestinal perforation) were reported following administration of from 0.045 to 2.0 mg/kg of loperamide (with most incidents involving ingestions of between 0.26 and 1.0 mg/kg). In one case, death occurred following a dose of 1.0 mg/kg of loperamide. Insufficient information was available to determine the doses of loperamide involved with the other 10 deaths reported in the medical literature.

Serious illness has been reported after ingestion of 0.045 mg/kg. There is no information about the amount of loperamide that would not cause serious illness, serious injury, or death in infants or children under 2 years of age. Without such data, the Commission's staff recommends that the lowest level known to have caused serious illness in humans (0.045 mg/kg) be reduced by a factor of 10 (referred to as an "uncertainty factor") to take into account biological variability. When this is done for a 10-kg (22.2 lb) child, the staff concludes that loperamide preparations containing more than 0.045 mg of loperamide in a single container should be subject to CR packaging requirements. This amount is contained in one-twentieth of a teaspoon of liquid loperamide or in one-fourtieth of a caplet of loperamide. (Ref. No. 1.)

[1] Seven deaths occurred in the hospital. In four cases the children were seriously ill and the parents requested permission to take them home before they died.

**D. Statutory Considerations**

*1. Hazard to Children*

Although the reported cases of death and life-threatening effects involved intentional administration of loperamide, the toxicity data from these incidents show that the amounts of loperamide available in OTC preparations is sufficient to cause serious illness and serious injury in children. Even though the OTC loperamide preparations currently on the market are voluntarily sold in CR packaging, the Commission concludes that a regulation is needed to ensure that those that are now in child resistant packaging and future products containing loperamide, including products from additional manufacturers that could be introduced now that loperamide's patent has expired, will be subject to CR requirements.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that because of the toxic nature of loperamide preparations, described above, and the accessibility of such preparations to children in the home, the degree and nature of the hazard to children in the availability of such substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances.

*2. Technical Feasibility, Practicability, and Appropriateness*

In issuing a standard for special packaging under the PPPA, the Commission is required by section 3(a)(2) of the PPPA, 15 U.S.C. 1472(a)(2), to find that the special packaging is "technically feasible, practicable, and appropriate." Technical feasibility exists when technology exists or readily can be developed and implemented by the effective date to produce packaging conforming to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Appropriateness exists when packaging complying with the standards will adequately protect the integrity of the substance and not interfere with the intended storage or use. Because the currently-marketed forms of loperamide are in CR packaging, the Commission concludes that special packaging for loperamide preparations is technically feasible, practicable, and appropriate.

*3. Reasonableness*

In establishing a special packaging standard, section 3(b) of the PPPA requires the Commission to consider the available data concerning whether the standard is reasonable. 15 U.S.C. 1472(b).

After considering the available data, the Commission concludes that there are no data that warrant a conclusion that the rule is not reasonable.

*4. Other Considerations*

Section 3(b) of the PPPA also requires the Commission, in establishing a special packaging standard, to consider:

a. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

b. The manufacturing practices of industries affected by the PPPA; and

c. The nature and use of the household substance. 15 U.S.C. 1472(b).

These items have been considered with respect to the various determinations made in this notice. (Ref. No. 3.)

**E. Effective Date**

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n. Because all loperamide preparations are currently in child-resistant packaging, the Commission concludes that good cause exists for having the regulation take effect 30 days after promulgation of a final rule. Therefore, the rule will become effective 30 days after publication of the final rule, as to all products subject to the rule that are packaged on or after that date. (Ref. Nos. 1 & 3.)

**F. Regulatory Flexibility Act Certification**

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 et seq.) generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. The purpose of the Regulatory Flexibility Act, as stated in section 2(b) (5 U.S.C. 602 note), is to require agencies, consistent with their objectives, to fit the requirements of regulations to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulations. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economics has prepared a preliminary economic assessment of a rule to require special packaging for loperamide preparations. They concluded that such a requirement would have no effect on current manufacturers and no incremental effect on future manufacturers, since future manufacturers would never have marketed the product in non-child-resistant packaging. Accordingly, for the reasons given above, the Commission concludes that the rule to require special packaging for products containing loperamide will not have any significant economic effect on a substantial number of small entities. (Ref. Nos. 3 & 6.)

**G. Environmental Considerations**

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed Poison Prevention Packaging Act (PPPA) packaging requirements for topical drug preparations containing loperamide.

The Commission's regulations at 16 CFR 1021.5(c)(3) state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. Analysis of the impact of this rule indicates that CR closures for loperamide preparations will have no significant effects on the environment. This is because the rule will not significantly increase the number of CR closures in use and, in any event, the manufacture, use, and potential disposal of the CR closures present the same potential environmental effects as do the currently used closures.

Therefore, because this rule has no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required. (Ref. Nos. 3 & 6.)

**List of Subjects in 16 CFR Part 1700**

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

## PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

**Authority:** Pub. L. 91-601, secs. 1-9, 84 Stat. 1670-74, 15 U.S.C. 1471-76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92-573, sec. 30(a), 88 Stat. 1231.15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(21) and republishing the introductory text of paragraph (a) to read as follows:

**§ 1700.14 Substances requiring special packaging.**

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(21) *Loperamide.* Preparations for human use in a dosage form intended for oral administration and containing more than 0.045 mg of loperamide in a single package (*i.e.*, retail unit) shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c).

* * * * *

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

### List of References

(**Note:** This list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Memorandum from Rita A. Orzel, Ph.D., HSPS, to Virginia A. White, HSPS, "Loperamide Toxicity," March 4, 1992.

2. Memorandum from Charles Wilbur, HSPS, to Rita A. Orzel, Ph.D., HSPS, "Loperamide: Technical Feasibility, Practicability, and Appropriateness Determination," April 1, 1992.

3. Memorandum from Marcia P. Robins, ECSS, to Rita A. Orzel, Ph.D., HSPS, "Preliminary Assessment of Economic and Environmental Effects of a Proposal to Require Child-Resistant Packaging for OTC Drug Preparations Containing Loperamide," April 6, 1992.

4. Briefing Memorandum with attached briefing package, August 6, 1992.

5. Letter from Beverly L. Black, Director, Federal Regulatory Affairs, American Society of Hospital Pharmacists, to Rita Orzel, December 23, 1992.

6. Memorandum from Marcia P. Robins, ECSS, to Rita A. Orzel, Ph.D., HSPS, "Final Regulatory Flexibility Act Analysis for Proposal to Require Child-Resistant Packaging for OTC Drug Preparations Containing Loperamide," February 19, 1993.

7. Memorandum from Jacqueline N. Ferrante, Ph.D., to James F. Hoebel, Acting AED for Health Sciences, "Updated Review of the Children and Poisoning Data Base for Loperamide Ingestions," dated April 29, 1993.

8. Memorandum from Marcia P. Robins, ECSS, to Jacque N. Ferrante, Ph.D., Project Manager, "Market Up-date: Loperamide," dated April 29, 1993.

9. Briefing Memorandum with attached briefing package, June 3, 1993.

[FR Doc. 93-17096 Filed 7-20-93; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 2

[Docket No. PL93-3-000]

### Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under Sections 211(a) and 213(a) of the Federal Power Act, As Amended and Added By the Energy Policy Act of 1992

Issued July 14, 1993.

**AGENCY:** Federal Energy Regulatory Commission DOE.

**ACTION:** Final rule; policy statement.

**SUMMARY:** The Federal Energy Regulatory Commission is adopting guidelines setting forth the elements of what generally constitutes a good faith request for transmission services under sections 211(a) and 213(a) of the Federal Power Act (FPA), as amended and added by the Energy Policy Act of 1992, and of a proper reply to that request. The Commission is issuing this Policy Statement as part of its effort to implement the transmission provisions of the Energy Policy Act of 1992.

**DATES:** Effective July 14, 1993. Comments may be filed on or before August 20, 1993.

**ADDRESSES:** Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:**

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-2167

Joseph C. Lynch (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-2128

Margaret J. Jess (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Telephone: (202) 208-0019.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

### Policy Statement

Issued July 14, 1993.

### I. Introduction

An essential element in implementing sections 211(a) and 213(a) of the Federal Power Act (FPA), as amended and added by the Energy Policy Act of 1992 respectively,[1] is determining what constitutes a good faith transmission request and reply under those sections. This issue is important for two reasons. First, the Commission may not order transmission services under section 211(a) unless the applicant has made a request for such services to the transmitting utility at least 60 days prior to filing an application with the Commission. Second, under section 213(a), unless the transmitting utility agrees to provide transmission services pursuant to a good faith request, at rates, charges, terms and conditions

[1] Public Law 102-486, 106 Stat. 2776 (1992), 16 U.S.C. 824*l*.

acceptable to the requestor, the transmitting utility is required to respond in writing to the requestor within 60 days of receipt of such request or other mutually agreed upon period.

These 60-day requirements make it important that potential section 211(a) applicants, 213(a) requestors, and transmitting utilities have general guidance, as soon as possible, as to what the Commission considers an acceptable transmission request and transmission reply under the newly amended statute. Accordingly, the Commission is adopting this Policy Statement containing such guidelines. The Commission's guidelines are broad enough to encourage individual initiative and negotiation within a flexible framework, leading to accommodations that will encourage optimum access to this country's transmission system.

## II. Public Reporting Burden

The Policy Statement establishes new reporting requirements that are the minimum guidelines necessary for a party to request transmission services from a transmitting utility and to ensure the proper response from the transmitting utility. The public reporting burden for these information collections is estimated to average 40 hours per request for the requestor and 160 hours per response for the transmitting utility, 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 these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415], and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for Federal Energy Regulatory Commission).

## III. Background

As amended by the Energy Policy Act, section 211(a) provides that the Commission may not issue an order directing a transmitting utility to provide transmission services unless the person applying for an order has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. A request for transmission services is, then, a condition precedent to the Commission's ability to order transmission services under section 211 of the FPA.

Section 213(a) of the FPA requires a response by a transmitting utility when any electric utility, Federal power marketing agency, or other person generating electric energy for sale for resale makes a "good faith" request to a transmitting utility[2] to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions of service. Section 213(a) provides that unless the transmitting utility accommodates the request on mutually agreeable terms it shall, within 60 days of receipt of the request, or other mutually agreed upon period, provide the person requesting the services with a detailed written explanation of the basis for the transmitting utility's proposed rates, charges, terms and conditions for such services. The written explanation must also contain an analysis of any physical or other constraints affecting the provision of the requested transmission services. Section 213(a) does not define what is meant by a good faith request for transmission services, nor does the FPA elsewhere contain a definition of the term, and the legislative history of the Energy Policy Act is silent on the subject.

The Commission believes that Congress, in enacting section 213(a) of the FPA, intended that potential applicants for transmission services under section 211 of the FPA and transmitting utilities provide one another with as much information as reasonably available concerning requests for, and ability to provide, transmission services, before a person seeking transmission services avails itself of section 211. The Commission further believes that if potential applicants and transmitting utilities exchange detailed information, this will help to encourage constructive business transactions through negotiated agreements. Accordingly, at this early stage of our administration of sections 211 and 213, we find it appropriate to adopt standards which provide for a broad exchange of information. A broad exchange of information will permit transmission requestors to file focused and more detailed applications under section 211(a) and will allow the Commission to expedite section 211(a) applications. It may also further the goal of encouraging negotiated agreements.

In adopting this Policy Statement, the Commission has read section 211(a) in consonance with section 213(a). On its face, section 211(a) requires that a party need only make "a request" to the transmitting utility. Section 211(a) does not use the adjective "good faith" nor does it require that a section 211(a) applicant specify rates, charges, and other terms and conditions of service when making a request.[3] The Commission believes, however, that for purposes of making a section 211(a) "request," a party's request for transmission services should be the same as a "good faith request" made under section 213(a).[4] If an entity does not make a section 213(a) good faith request 60 days before filing a section 211(a) application, the Commission believes that it has the statutory authority to deny such an application on the basis that a proper request was not made pursuant to section 211(a).

There are several reasons why the Commission finds it appropriate to incorporate the 213(a) good faith requirement as part of what will be deemed to be a satisfactory request under section 211(a). First, because sections 211 and 213 both refer to a 60-day time clock which starts when an entity makes a request for services to a transmitting utility, we believe Congress intended the two sections to work in conjunction with one another. If we were to implement section 211(a) so as to require that a party make only "a request" to a transmitting utility 60 days before filing a section 211 application with the Commission, the two sections would not work in a complementary fashion with one another, because a mere "request" may constitute less than a "good faith" request. Second, requiring two standards—one for "requests" and the other for "good faith requests"—could become administratively burdensome and confusing. Third, if we construed section 211 to require mere "post-card" requests, without requiring that a person requesting transmission services file a good faith request and utilize the "request and response" scenario envisioned by section 213(a), the section 213(a) process could be rendered a nullity. Moreover, it could result in

[2] Section 3(23) of the FPA, as added by the Energy Policy Act, 16 U.S.C. 796(23), defines a "transmitting utility" as any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale.

[3] Accordingly, as a legal matter the Commission could implement the request requirement under section 211(a) using a more lenient standard than would be used for "good faith" requests under section 213(a). However, as discussed below, as a policy matter we believe it is appropriate to use the same standard.

[4] *See* Section 2.20(a)(2) of the Policy Statement.

requestors and transmitting utilities avoiding or circumventing attempts at negotiation. Likewise, perfunctory responses to requests for transmission services could result in avoiding or circumventing attempts at negotiation.

There is no discussion in the Joint Explanatory Statement of the Committee of Conference to guide us as to whether Congress intended potential section 211 applicants and transmitting utilities to attempt negotiation in order to avoid section 211 proceedings when possible. However, in view of the language, structure, and requirements of section 231(a), we believe that as a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation. Therefore, the Commission will adopt standards which: (1) Identify the type of information that would facilitate a section 211(a) request; (2) foster greater competition in wholesale electric markets; (3) encourage coordination and cooperation and (4) encourage negotiated agreements where possible.

This Policy Statement sets forth the elements of what the Commission believes will generally constitute a good faith request under sections 211(a) and 213(a) of the FPA and a proper reply to a good faith request. This proceeding is one of several concurrent proceedings in which the Commission is implementing the transmission provisions of the Energy Policy Act. The other proceedings are: (1) The Commission's Request for Public Comments on the Regional Transmission Group Proposal;[5] (2) Proposed New Reporting Requirements Implementing Section 213(b) of the FPA;[6] and (3) the Commission's inquiry regarding transmission pricing.[7]

This Policy Statement contains only those elements that the Commission would generally look to if a party seeking transmission services were to request an order directing a transmitting utility to provide transmission services under section 211 of the FPA. The Commission encourages those engaged in transmission transactions to devise, on their own initiative, creative ways of solving transmission needs, thus avoiding the delay inevitably resulting from case-by-case resolution by the Commission. The Commission emphasizes that the guidelines set forth in this Policy Statement are neither rigid nor all-encompassing. The Commission encourages negotiation and remains open to suggestions on how to accommodate specific concerns as they arise.

## IV. Discussion

### *A. Components of a Good Faith Request*

This Policy Statement contains twelve components of a good faith transmission request. These components are the minimum components that will generally be necessary to provide the transmitting utility with sufficient information so that it can analyze the service request. If a transmitting utility is to be able to analyze a transmission request, the person requesting services must specify the services that it wants. The information that a transmitting utility would need in order to determine how to provide the requested services includes: (1) The identity of the purchaser; (2) assurances that the prospective purchaser of the transmission services is eligible to request the services; and (3) assurances that the Commission is authorized to order the type of services requested under appropriate circumstances.

A good faith request for transmission services should also contain a specific, technical description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system. Certain of the technical components of a request for transmission services are discussed below. The others are self-explanatory.

#### Component (4)—Specifying the Type of Services Requested

Section 211 of the FPA does not place any limit on what is meant by "transmission services," nor does the legislative history suggest any limitation on the nature of the wholesale transmission services the Commission can order under section 211. In the absence of any indication that Congress intended to limit the type of transmission services ordered, any party may request network service under section 211. It is important that the specific language of Component (4) not prevent parties from requesting any type of transmission services, particularly network service. As is the case with any request for transmission under section 211, the Commission will determine whether to order network service on a case-by-case basis.

Although the Commission at this time believes that service more flexible than point-to-point can be ordered under section 211, and thus is a proper subject for good faith requests, parties may submit comments on the limitations, if any, on the Commission's authority to order such service.

The party requesting transmission services should specify the character and nature of the services. The nature of transmission service varies along a continuum, starting with point-to-point service, passing through a form of service that might best be characterized as flexible point-to-point service, and culminating with network service. These terms have no industry-wide accepted definitions. However, the Commission has characterized point-to-point service as involving designated points of entry into and exit from the transmitting utility's system with a designated amount of transfer capability at each point.[8] In a Staff Paper issued with the Commission's recent notice of inquiry concerning transmission pricing, the Commission's staff stated that it understood network service to mean transmission service that allows the user to vary its schedule and points of delivery and receipt on the grid without paying an additional charge for each change.[9]

The Commission invites comments on whether specifying point(s) of receipt and delivery will unduly restrict the ability of parties to request the flexibility of the transmission service that some parties may need. "Network service," for example, involves substantial flexibility in moving power between receipt and delivery points.[10] It is possible that the need for network service will be localized within a control area. An example might be the network service needed by an association of distributors to dispatch their own resources, or by an IPP to sell to multiple buyers. This type of local network service might be combined with flexible point-to-point service to import or export power outside the control area. Alternatively, some parties may wish to request network service over the entire grid of the control area utility, which presumably would involve substantially more flexibility of use. Specifying receipt and delivery

[5] 57 FR 54,580 (Nov. 19, 1992); 61 FERC ¶61,232 (1992).

[6] 58 FR 17,544 (April 5, 1993); IV FERC Stats. & Regs. ¶32,493 (1993).

[7] Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act. 58 FR 36,400 (July 7, 1993), IV FERC Stats. & Regs. ¶_____.

[8] Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,768 (1992).

[9] *See* Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Staff Paper at 13 (Question 18), 58 FR 36,400 (July 7, 1993), IV FERC Stats. & Regs. ¶ _____(1993).

[10] We note that in the Staff Paper issued in conjunction with the Commission's transmission pricing inquiry, *supra* n.9, persons were asked to comment on whether the staff's definition of network service, contained in that paper, is reasonable. Persons wishing to comment on the parameters of "network service" should do so in that docket.

points may not restrict the provision of local network service, but could restrict parties in requesting system-wide network service.

The Commission understands that the network service issue raises important questions, such as how to price the service and what user rights would be associated with it. Some of these will be addressed in the inquiry concerning transmission pricing that the Commission recently initiated.[11] In this proceeding, we ask the following questions:

Question 1. Does the service specification in Component (4) unduly restrict the ability of parties to request the transmission services that they need? If so, what changes would be appropriate?

Question 2. Does the language in Component (4) give owners of transmission facilities sufficient information to provide network service?

Component (5)—The Names of Other Parties Expected To Be Delivering and/or Receiving Power From the Transmitting Utility

If a requesting party knows that it will need to receive services from multiple transmitting utilities, it should provide such information to the transmitting utilities. In instances in which the party requesting services does not know who all the parties will be, however, it should provide whatever information it has and indicate what information is unknown or tentative at the time it makes the request. The transmitting utilities are usually the control area utilities that either are affected by the power flows in question or that would lie on the contract path if two or more transmitting utilities are involved in the transaction. Transmitting utilities need to know which electric control areas will be involved in a transaction.

Component 8—The Expected Transaction Profile

The information supplied by the requesting party and needed by the transmitting utility should be a function of the type of services being requested. Some types of services may require more detailed information than others. The requesting party should provide enough information to permit the transmitting utility to model the power flow impact on its system of both receipts and deliveries. The "expected transaction profile" means the load factor data that describes the flow of power and energy into the transmitting utility's system, *i.e.*, the hourly quantities of power the requesting party would expect to deliver to the transmitting utility's grid at points of interconnection between electric control area utilities, if known.

Component 9—The Degree of Firmness of the Requested Service

The Commission will leave it to the party requesting the services to specify how firm a service is being requested. The degree of firmness of transmission service is often categorized as firm or interruptible. However, these designations may not adequately describe the service that is sought. Therefore, the requesting party should indicate the specific degree of firmness that it seeks. This will help to reduce the likelihood of misunderstandings.

Component 10—Requests Made in Response to Solicitations

Persons requesting service in order to submit a bid in a solicitation for generation resources should state the purpose of the requested service and identify the solicitation for which they are requesting service. Naming the solicitation will be helpful, because some solicitations could result in duplicative transmission service requests. The transmitting utility will be better able to gauge the aggregate amount of service it may have to provide if it can group duplicate requests.

Component 11—The Terms and Conditions Requested

Section 213(a) provides that the requestor must propose rates, terms and conditions for the services it is requesting. We do not think that it is necessary for the requestor to propose the exact, detailed rates, terms and conditions. Rather, a party requesting transmission services can fulfill the rates, terms and conditions requirement by specifying a rate methodology (e.g., embedded or incremental cost), an existing transmission tariff, an existing transmission contract or an existing rate. The Commission does not intend to allow utilities to delay responses to requests for transmission services by taking an overly rigid or technical approach to the "rates, terms and conditions" element of the request. It is sufficient if the one requesting the services has made an effort to develop workable terms and conditions and has proposed what it sees as reasonable rates. The transmitting utility is not bound by the requesting party's proposed rates, terms and conditions. It may reject the proposed rates, terms and conditions and propose its own.

Component 12—Additional Information

Finally, to improve overall effectiveness and efficiency, the party requesting the service should include any information that enhances the transmitting utility's ability to evaluate the request. This can improve the ability to negotiate and lower costs for all parties and will improve chances to arrange for the requested transmission without resorting to section 211 procedures before the Commission.

*B. Components of a Reply to a Good Faith Request*

This Policy Statement contains five components of a reply to a good faith request for transmission services under section 213(a). These are discussed below.

Component (1)—Acknowledgment of Receipt of the Request

A party requesting transmission services may not seek an order from the Commission under section 211 of the FPA unless it has first requested the transmission services from a transmitting utility 60 days before applying to the Commission. That 60-day period begins to run when the transmitting utility receives the request. A transmitting utility should promptly acknowledge receipt of a request for transmission services. Unless the parties agree on a different time frame for the utility's response, a prompt acknowledgment should occur within 10 days. Receipt of the acknowledgement would alert the one requesting transmission services that its 60-day waiting period has begun.

Component (2)—Requests by the Transmitting Utility for Clarification of Information

The Commission believes that a transmitting utility should be able to ask for clarification of a request if the utility needs more information to evaluate the requested services. In the absence of limitations on requests for such clarifications, however, the processing of requests for transmission could be unduly delayed. Therefore, information clarifications sought by the transmitting utility should be limited to facts needed to evaluate the specific services being requested. A requesting party who believes that a transmitting utility is attempting to frustrate the process by making excessive requests for clarifications can raise this issue when it files a request for a section 211 order with the Commission 60 days after the utility has received its request.

[11] *See* n. 9, *supra*.

Component (3)—The Requirement That the Transmitting Utility Respond Within 60 Days

When the transmitting utility acknowledges receiving a request for transmission services and responds by notifying the party making the request of fees associated with the evaluation of a transmission request, it should specify the date by which it will respond to the request or initiate negotiations that could lead to agreement on some mutually acceptable date other than that set by the 60-day clock. The fees for evaluating transmission service requests should be set based on the cost of processing the request.

Component (4)—The Transmitting Utility's Response If It Believes It Can Provide the Requested Service From Existing Capacity

When a transmitting utility determines that it can provide the requested services from existing capacity, it should proceed to offer the party requesting the services a proposed service agreement covering the service that it will provide. The contract should contain detailed specifications of the price at which the transmitting utility proposes to provide the services.

It is not necessary for the proposed service agreement to contain a regulatory "cost-of-service" study of the kind included in rate filings by public utilities. However, the agreement should explain the basis for the charges for each component of service, including the unbundled components of any transmission rate and any other charges.[12] In other words, the agreement should clearly lay out the charges for each component of the proposed service and the total price the party requesting the service would be expected to pay. Similarly, the agreement should explicitly describe all of the applicable terms and conditions of the transmission services provided under the contract.

The transmitting utility should accompany the agreement with a clear statement of the time during which the offer to provide the transmission services will remain open. The Commission recognizes that an open contract offer obligates the seller while imposing no countervailing obligation on the purchaser, and that an unexecuted contract potentially ties up transmission facilities, thus jeopardizing the availability and price for subsequent requests that would use the same facilities.

On the other hand, entities that might request transmission services may frequently be in the position of bidding on a power solicitation or negotiating other related contracts. In such an instance, the transmission agreement is only one element of the whole transaction, and the purchaser may need to finalize all of the pieces at one time. Under these circumstances, the purchaser might want some sort of reservation or contingency arrangement that would extend the period during which the contract is held open until a time certain or until a set of events reaches completion. Preferably, transmitting utilities and the party requesting the services can be flexible and resolve these problems by mutual agreement. However, the Commission feels that, at a minimum, a transmitting utility should permit the party requesting the service sufficient time to review agreements and coordinate multiple stages of joint transactions.

Component (5)—What the Transmitting Utility Should Do If It Determines That It Must Construct Additional Facilities or Modify Existing Facilities in Order To Provide All or Part of the Requested Services

In situations in which the transmitting utility determines that it must construct additional facilities or modify existing facilities to provide all or part of the requested services, the transmitting utility must provide a fully documented description of why and for how long its grid is and will be constrained. Only by providing full technical information to a person requesting transmission services can a transmitting utility establish a productive working relationship for negotiating transmission service contracts.

In addition to explaining the determination of existing constraints, the transmitting utility should offer the party requesting services an executable contract for a study to determine how the constraint can be relieved. The study contract should specify the cost and production time for the study. The study itself should result in a determination of how the transmitting utility will remove the constraint, how long it will take and how much it will cost.

Transmitting utilities will usually be able to remove constraints by arranging for some type of physical expansion of the transmission grid, but there may be ways short of new construction to meet a request for transmission services. A party requesting services may find an alternate transmission path, or may be able to purchase someone else's prior transmission rights.

Since finding alternative means to accommodate a transmission request may require information available only to the transmitting utility, the Commission urges transmitting utilities to consider ways of making such information available to persons requesting transmission services. One way might be to post existing and planned transmission rights sales on an electronic bulletin board so that the parties can engage in informed negotiations.

If a transmitting utility determines that it can provide part but not all of the requested services without building new facilities, it should offer to provide the part of the services that does not require expansion of its transmission facilities under a separate contract. In effect, the transmitting utility may be able to treat such a request as two separate transactions—one for service on existing facilities and the other as a request involving expansion decisions.

*C. Other Issues*

1. Prioritization of Service Requests

There is no component regarding how the transmitting utility should prioritize service requests. A transmitting utility may find it difficult to prioritize requests in a fair manner, especially if the transmission grid is near capacity and only a limited number of transmission service requests can be accommodated without expansion. Although the Commission recognizes that "first-come, first-served" prioritization will not always produce the most efficient allocation of capacity, at this time it will accept prioritization based on this procedural rule or any reasonable method of allocation. However, the Commission expects that the industry may develop better allocation mechanisms in the future.

2. The Right of an Applicant to File a Section 211 Request After 60 Days

Good faith requests for transmission services can always be brought to the Commission 60 days after the request is made to the transmitting utility if the party making the request finds the transmitting utility's response unsatisfactory. However, we reiterate that these minimum elements are intended to serve as guidelines; they should not be viewed as limiting the negotiating options available to the parties so long as they do not require Commission action. The Commission urges parties to communicate freely and openly with each other and to work

[12] These components may be capital costs, such as interconnection charges, or variable costs, such as charges for transmission losses, that the transmitting utility proposes to charge for the service.

together creatively and constructively to eliminate constraints and to explore alternative transmission approaches to efficiently coordinate planning for all transmission users.

**V. Information Collection Statement**

The Office of Management and Budget's (OMB) regulations at 5 CFR 1320.12 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this policy statement are contained in new 18 CFR 2.20.

The Commission is issuing this Policy Statement with the information requirements to carry out its regulatory responsibilities to implement the transmission provisions of the Energy Policy Act of 1992. As provided by the Energy Policy Act, section 211(a) provides that the Commission may not issue an order directing a transmitting utility to provide transmission services unless the party requesting such an order has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. A request for transmission services is, then, a condition precedent to the Commission's ability to order transmission services under section 211 of the Federal Power Act. Section 213(a) of the FPA requires a response by a transmitting utility when any electric utility, Federal power marketing agency, or any other person generating electric energy for sale or resale makes "a good faith" request to a transmitting utility to provide wholesale transmission services under specific rates, charges, terms and conditions of service. The Commission's Office of Electric Power Regulation uses the data for determination of an acceptable transmission request for service of a wheeling order under section 211 of the FPA, and for a determination as to whether a transmitting utility has provided a sufficient reply under the newly amended statute. These collections of information are intended to be the minimum elements needed to make good faith request and a proper response.

The Commission is submitting to the Office of Management and Budget a notification of these proposed collections of information. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, (Attention: Desk Officer for Federal Energy Regulatory Commission).

**VI. Public Comment Procedures**

The Commission invites interested persons to submit written comments on the matters and questions raised in this Policy Statement. An original and 14 copies of the comments must be filed with the Commission no later than August 20, 1993. Comments should be submitted to the Office of the Secretary, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. PL93–3–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington DC 20426, during normal business hours.

**List of Subjects in 18 CFR Part 2**

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 2, chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

**Lois D. Cashell,**

*Secretary.*

## PART 2—GENERAL POLICY INTERPRETATIONS

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

**Authority:** 15 U.S.C. 717–716w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2 is amended by adding § 2.20, to read as follows:

**§ 2.20 Good faith requests for transmission services and good faith responses by transmitting utilities.**

(a) *General Policy.* (1) This Statement of Policy is adopted in furtherance of the goals of sections 211(a) and 213(a) of the Federal Power Act, as amended and added by the Energy Policy Act of 1992.

(2) Under section 211(a), the Commission may issue an order requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) only if an applicant has made a request for transmission services to the transmitting utility that would be the subject of such order at least 60 days prior to its filing of an application for such order. The requirement in section 211(a) that an applicant make such a request will be met if such an applicant has, pursuant to section 213(a) of the FPA, made a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions.

(3) It is the Commission's intention to apply the standards of this Statement of Policy when determining whether and when a valid "good faith" request for service was made.

(4) It is the Commission's intention to encourage an open exchange of information that exhibits a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility.

(5) The Commission intends to apply this Statement of Policy so as to carry out Congress' objective that, subject to appropriate terms and conditions and just and reasonable rates, in conformance with section 212 of the FPA, access to the electric transmission system for the purposes of wholesale transactions be more widely available.

(b) *The Components of a good faith request.* The Commission generally considers the following to constitute the minimum components of a good faith request for transmission services:

(1) The identity, address, telephone number, and facsimile number of the party requesting transmission services, and the same information, if different, for the party's contact person or persons.

(2) A statement that the party requesting transmission services is, or will be upon commencement of service, an entity eligible to request transmission under sections 211(a) and 213(a) of the FPA.

(3) A statement that the request for transmission services is intended to satisfy the "request for transmission services" requirement under sections 211(a) and 213(a) of the FPA, and that the request is not a request for mandatory retail wheeling prohibited under section 212(h) of the FPA.

(4) The party requesting transmission services should specify the character and nature of the services requested. Some types of service may require more detailed information than others. Where point-to-point service is requested, the party requesting transmission services should specify the anticipated point(s) of receipt to the transmitting utility's grid and the anticipated point(s) of delivery from the transmitting utility's grid. Where a party requesting

transmission services requests additional flexibility to schedule multiple resources to meet its needs (*e.g.*, network service), the request for services should contain a description of the requested services in sufficient detail to permit the transmitting utility to model the additional services on its transmission system.

(5) The names of any other parties likely to provide transmission service to deliver electric energy to, and receive electric energy from, the transmitting utility's grid in connection with the requested transmission services.

(6) The proposed dates for initiating and terminating the requested transmission services.

(7) The total amount of transmission capacity being requested.

(8) To the extent it is known or can be estimated, a description of the "expected transaction profile" including load factor data describing the hourly quantities of power and energy the party requesting transmission services would expect to deliver to the transmitting utility's grid at relevant points of interconnection. In the event delivery is to multiple points within the transmitting utility's electric control area, the requestor should describe, to the extent it is known or can be estimated, the expected load (over a given duration of time) at each such delivery point.

(9) Whether firm or non-firm service is being requested. Where a party requests non-firm service, it should specify the priority of service it is willing to accept, or the conditions under which it is willing to accept interruption or curtailment, if known.

(10) A statement as to whether the request is being made in response to a solicitation and a copy of the solicitation if publicly available. This will help the transmitting utility determine whether requests for transmission service are duplicative or mutually exclusive of requests filed by other parties.

(11) The proposed rates, terms and conditions for the requested transmission services as required by section 213(a). It is not necessary for the requestor to propose a specific numerical rate. Rather, a party requesting transmission services can fulfill the rates, terms and conditions requirement by specifying a rate methodology (*e.g.*, embedded or incremental cost) or by referencing an existing formula rate, transmission tariff, or transmission contract. The validity of the good faith request will not depend on the rates proposed by the party requesting transmission services. This requirement is not intended to allow utilities to delay responses to requests for transmission services, or to deny requests for transmission services on the basis of an overly rigid or technical approach to the "rates, terms and conditions" element of the request.

(12) Any other information to facilitate the expeditious processing of its request. Such information will improve the negotiation process, reduce costs, and will improve chances to arrange the requested transmission without resorting to section 211 application procedures before the Commission.

(c) *Components of a Reply to a Good Faith Request.* The Commission generally considers the following to constitute the minimum components of a reply to a good faith request for transmission services under section 213(a):

(1) Unless the parties agree to a different time frame, the transmitting utility must acknowledge the request within 10 days of receipt. The acknowledgement must include a date by which a response will be sent to the party requesting transmission services and a statement of any fees associated with responding to the request (e.g., initial studies).

(2) The transmitting utility may ask the applicant to provide clarification of only the information needed to evaluate and process a "good faith" request. If the person requesting transmission services believes the transmitting utility is attempting to frustrate the process by making excessive requests for clarification, it may raise this issue if, and when, it files a request for a section 211 order with the Commission.

(3) The transmitting utility must respond to a request within 60 days of receipt or some other mutually agreed upon response date. If both parties agree to an alternative schedule, the agreement must be in writing and signed by both parties.

(4) If the transmitting utility determines that it can provide all the requested services from existing capacity, it should respond by offering the party requesting transmission services an executable service agreement that at a minimum contains the following information:

(i) A description of the proposed transmission rate and any other costs. It is not necessary for the proposed service agreement to contain a fully developed cost-of-service. However, the agreement should explain the basis for the charges for each component of service, including the unbundled components of any transmission rate as well as any other charges.

(ii) The proposed service agreement should explicitly describe all of the applicable terms and conditions of the transmission services provided under the agreement.

(iii) The transmitting utility should accompany the proposed service agreement with a clear statement of the time during which the offer to provide the transmission services will remain open. An open agreement offer may obligate the seller while imposing no countervailing obligation on the purchaser, and an unexecuted contract potentially ties up transmission facilities, thus jeopardizing the availability and price for subsequent requests that would use the same facilities. However, at a minimum, a transmitting utility should permit the party requesting transmission services sufficient time to review service agreements and coordinate multiple stages of joint transactions.

(5) If the transmitting utility determines that it must construct additional facilities or modify existing facilities to provide all or part of the requested services, it must:

(i) Identify the specific constraints and their duration that prevent it from providing all the requested services and explain how these constraints prevent it from providing all the requested services or the desired level of firmness.

(ii) Provide to the applicant all studies, computer input and output data, planning, operating and other documents, work papers, assumptions and any other material that forms the basis for determining the constraints.

(iii) Offer to the applicant an executable agreement under which the applicant agrees to reimburse the transmitting utility for all costs of performing any studies necessary to determine what changes to the transmitting utility's grid are needed to overcome the constraint and provide the requested services, their cost, and the estimated time to complete them. At a minimum, the proposed agreement should contain the following:

(A) An estimate of the cost of the study and the time required to complete it, and

(B) A commitment to supply to the party requesting transmission services all computer input and output data, planning, operating and other documents, work papers, assumptions and any other material used to perform the study.

(iv) If a transmitting utility determines that it can provide part but not all of the requested services without building new facilities, it should inform the applicant of any portion of the requested services that can be performed without

constructing additional facilities or modifying existing facilities. In effect, the transmitting utility may be able to treat such a request as two separate transactions—one for service on existing facilities and the other as a request involving expansion decisions. Furthermore, where there are alternative, less expensive means of satisfying all or a portion of a transmission request, the Commission expects the transmitting utility to explore such alternatives (*e.g.*, redispatching certain generating units to alleviate a constraint).

[FR Doc. 93-17216 Filed 7-20-93; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 510

### Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address from Anaquest, Inc., to Anaquest, Inc., A Subsidiary of BOC Health Care, Inc.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Judy M. O'Haro, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8737.

**SUPPLEMENTARY INFORMATION:** Anaquest, Inc., Bernards/78, 110 Allen Rd., Liberty Corner, Bernards Township, NJ 07938, has informed FDA of a change of sponsor name and address to Anaquest, Inc., A Subsidiary of BOC Health Care, Inc., Liberty Corner, NJ 07938-0804. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor name and address.

#### List of Subjects in 21 CFR Part 510

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

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

### PART 510—NEW ANIMAL DRUGS

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

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

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Anaquest, Inc.," and by adding in its place a new entry for "Anaquest, Inc., A Subsidiary of BOC Health Care, Inc.," and in the table in paragraph (c)(2) in the entry for "010019" by revising the sponsor name and address to read as follows:

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

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * | * |
| Anaquest, Inc., A Subsidiary of BOC Health Care, Inc., Liberty Corner, NJ 07938-0804 | 010019 |
| * * * * | * |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * | * |
| 010019 | Anaquest, Inc., A Subsidiary of BOC Health Care, Inc., Liberty Corner, NJ 07938-0804 |
| * * * * | * |

Dated: July 13, 1993.

**George A. Mitchell,**

*Director, Office of Surveillance and Compliance, Center for Veterniary Medicine.*

[FR Doc. 93-17210 Filed 7-20-93; 8:45 am]

BILLING CODE 4160-01-F

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Neomycin Sulfate Solution

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by The Upjohn Co. The ANADA provides for the oral use of a generic neomycin sulfate solution for the treatment and control of colibacillosis in cattle (excluding veal calves), swine, sheep, and goats.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center For Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8643.

**SUPPLEMENTARY INFORMATION:** The Upjohn Co., Kalamazoo, MI 49001-0199, filed ANADA 200-113, which provides for the oral use of a generic 200 milligram/milliliter (mg/mL) neomycin sulfate solution (Biosol® liquid) for the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin in cattle (excluding veal calves), swine, sheep, and goats. The drug is administered at 10 mg neomycin sulfate per pound of body weight per day in divided doses.

Approval of ANADA 200-113 for The Upjohn Co.'s Biosol® liquid is as a generic copy of The Upjohn's Co.'s NADA 11-315 for Neomix® 325 soluble powder. The ANADA is approved as of June 28, 1993, and the regulations are amended by adding new § 520.1485 (21 CFR 520.1485) to reflect the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

#### List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. New § 520.1485 is added to read as follows:

**§ 520.1485 Neomycin sulfate solution.**

(a) *Specifications.* Each milliliter contains 200 milligrams of neomycin sulfate (equivalent to 140 milligrams of neomycin base).

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.430 of this chapter.

(d) *Conditions of use*—(1) *Amount.* 10 milligrams of neomycin sulfate per pound of body weight per day in divided doses for a maximum of 14 days.

(2) *Indications for use.* For the treatment and control of colibacillosis (bacterial enteritis) caused by *Escherichia coli* susceptible to neomycin in cattle (excluding veal calves), swine, sheep, and goats.

(3) *Limitations.* Administer undiluted or in drinking water. Prepare a fresh solution daily. If symptoms persist after using this preparation for 2 or 3 days, consult a veterinarian. Treatment should continue 24 to 48 hours beyond remission of disease symptoms, but not to exceed a total of 14 consecutive days. Discontinue treatment prior to slaughter as follows: cattle and goats, 30 days; swine and sheep, 20 days.

Dated: July 14, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17209 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Sulfadimethoxine Injectable

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for the use of a generic sulfadimethoxine sterile solution in cattle for the treatment of bovine respiratory disease complex, bacterial pneumonia, and necrotic pododermatitis and calf diphtheria.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Melanie Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8643.

**SUPPLEMENTARY INFORMATION:** Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed ANADA 200–038, which provides for the use of a generic sulfadimethoxine sterile solution in cattle for the treatment of bovine respiratory disease complex (shipping fever complex), bacterial pneumonia associated with *Pasteurella spp.* sensitive to sulfadimethoxine, and necrotic pododermatitis (foot rot), and calf diphtheria caused by *Fusobacterium necrophorum*, sensitive to sulfadimethoxine.

Approval of ANADA 200–038 for Agri Laboratories' sulfadimethoxine injection 40 percent antibacterial is as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 041–245 for Albon® (sulfadimethoxine) injection 40 percent antibacterial. The ANADA is approved as of May 25, 1993, and the regulations are amended in 21 CFR 522.2220 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

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

2. Section 522.2220 is amended by revising paragraph (a)(2) to read as follows:

**§ 522.2220 Sulfadimethoxine injection.**

(a) * * *

(2) *Sponsor.* (i) See No. 000004 in § 510.600(c) of this chapter for conditions of use as in paragraphs (a)(3)(i) through (a)(3)(iii) of this section.

(ii) See No. 057561 for conditions of use as in paragraph (a)(3) of this section.

* * * * *

Dated: July 13, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17207 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

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## 21 CFR Part 524

### Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, Clotrimazole Ointment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering-Plough Corp. The NADA provides for the use of Otomax® (gentamicin sulfate, betamethasone valerate, clotrimazole) ointment for treatment of canine otitis externa associated with yeast and/or bacteria susceptible to gentamicin.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8614.

**SUPPLEMENTARY INFORMATION:** Schering-Plough Animal Health Corp., P.O. Box 529, Galloping Hill Rd., Kenilworth, NJ 07033, is sponsor of NADA 140–896 which provides for the use of Otomax® (gentamicin sulfate, betamethasone valerate, clotrimazole) ointment. Each gram (g) of ointment contains

gentamicin sulfate equivalent to 3 milligrams (mg) gentamicin base, betamethasone valerate equivalent to 1 mg betamethasone, and 10 mg clotrimazole. Otomax® is used for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin. The NADA was approved as of June 9, 1993, and the regulations are amended in 21 CFR part 524 by adding new § 524.1044g to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)) provides a 3-year period of exclusivity to this approval beginning June 9, 1993, because new clinical or field investigations (other than bioequivalence or residue studies) essential to this approval were conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

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

**List of Subjects in 21 CFR Part 524**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

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

2. New § 524.1044g is added to read as follows:

**§ 524.1044g Gentamicin sulfate, betamethasone valerate, clotrimazole ointment.**

(a) *Specifications.* Each gram (g) of ointment contains gentamicin sulfate equivalent to 3 milligrams (mg) gentamicin base, betamethasone valerate equivalent to 1 mg betamethasone, and 10 mg clotrimazole.

(b) *Sponsor.* See 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin.

(2) For 7.5 or 15 g tube, instill 4 drops of ointment twice daily into the ear canal of dogs weighing less than 30 pounds, instill 8 drops twice daily for dogs weighing 30 pounds or more. For 215 g bottle, instill 2 drops of ointment twice daily into the ear canal of dogs weighing less than 30 pounds, instill 4 drops twice daily for dogs weighing 30 pounds or more. Therapy should continue for 7 consecutive days.

(3) The external ear should be cleaned and dried before treatment. Remove foreign material, debris, crusted exudates, etc., with suitable solutions. Excessive hair should be clipped from the treatment area. If hypersensitivity occurs, treatment should be discontinued and alternate therapy instituted.

(4) Corticosteroids administered to dogs, rabbits, and rodents during pregnancy have resulted in cleft palate in offspring. Other congenital anomalies including deformed forelegs, phocomelia, and anasarca have been reported in offspring of dogs which received corticosteroids during pregnancy. Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition if used during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis.

(5) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 13, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93–17208 Filed 7–20–93; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 635

**RIN 2125–AD12**

### General Material Requirements

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is amending its regulations on the Buy America provisions and the use of convict produced materials to comply with the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Sections 1041(a) and 1048 of the ISTEA amended and clarified the Buy America provisions. Iron has been added to the materials and products that are covered under the Buy America provisions. The coating of steel has been determined to be a manufacturing process and thereby subject to the Buy America provisions. Section 1019 of the ISTEA clarifies the intent of Congress regarding convict produced materials. Materials produced by convict labor after July 1, 1991, may not be used for Federal-aid highway construction projects unless produced at a prison facility producing convict made materials for Federal-aid construction projects prior to July 1, 1987. This action reaffirms the requirements previously placed on the use of material produced by convict labor on Federal-aid highway projects.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. William A. Weseman, Chief, Construction and Maintenance Division, Office of Engineering, 202–366–0392, or Mr. Wilbert Baccus, Office of Chief Counsel, 202–366–0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Buy America**

On December 18, 1991, the President signed into law the ISTEA (Pub. L. 102–240, 105 Stat. 1914) to develop a national intermodal surface transportation system, to authorize funds for construction of highways, for highway safety programs and mass transit programs, and for other purposes. Section 1048(a) of the ISTEA amended section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2136), which had established Buy America

requirements for Federal-aid highway projects, by inserting the word "iron" after the word "steel." By adding the word "iron," the Congress has expanded Buy America protection to include iron and iron products in addition to steel and steel products, which were previously protected.

Section 1041(a) of the ISTEA requires that existing 23 CFR 635.410 relating to Buy America requirements for the Federal-aid highway program be applied to coating. By its action, the Congress has clarified that the activity of coating is considered a manufacturing process. The material being applied as a coating is not covered under Buy America. Coating is interpreted to mean all processes that protect or enhance the value of a material or product to which it is applied, such as epoxy coatings, galvanizing or painting.

Although the subtitle for section 1041(a) addressed "coating of steel," the text of section 1041(a) refers to "coating" without limitation. The FHWA believes that the Congress intended that the Buy America provisions of 23 CFR 635.410 be applied to the process of coating whenever a material that is subject to Buy America is covered with a coating intended to protect or enhance the value of the material that is coated. Section 1048 of the ISTEA also amended the Buy America Program to add iron to steel as covered by the program. Accordingly, the FHWA is amending section 635.410 to include the process of applying a coating to either steel or iron.

**Convict Produced Materials**

Section 1019 reestablishes the restrictions of 23 U.S.C. 114 on the use of convict produced materials on Federal-aid highway construction projects for materials produced after July 1, 1991. This section overrides the provisions of the Department of Justice's 1989 Appropriations Act which permitted the unrestricted use of these materials in the construction of Federal-aid highways. Now only materials which were produced by convicts prior to July 2, 1991, may be used on Federal-aid highway projects free from the restrictions placed on the use of these materials by 23 U.S.C. 114.

The Surface Transportation and Uniform Relocation Assistance Act (STURAA) became law on April 2, 1987 (Pub. L. 100–17, 101 Stat. 132). Section 112 of the STURAA amended 23 U.S.C. 114(b) to include limitations on convict produced materials. The section as amended limited the use of materials produced by convict labor for use in Federal-aid highway construction to (1) materials produced by convicts who are on parole, supervised release, or probation from a prison or (2) materials produced in a qualified prison facility with the amount of such materials produced during any 12-month period not exceeding the amount produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

Subsequently, section 202 of the Judiciary and Related Agencies Appropriation Act for Fiscal Year 1989 (JRAA), Pub. L. 100–459, 102 Stat. 2186, contained language which nullified the limitations on the use of convict produced materials on Federal-aid projects imposed by section 112 of the STURAA. Section 1019 of the ISTEA negates the nullifying effect of section 202 of the JRAA and thereby reinstates the restrictive requirements of section 112 of the STURAA (23 U.S.C. 114(b)(2)).

**Rulemaking Analysis and Notices**

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

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, or a significant regulation under the regulatory policies and procedures of the Department of Transportation. Because the revisions in this document substantially reflect statutory language mandated by the ISTEA, the FHWA for good cause finds that public comment is unnecessary under section 553(b)(3)(B) of the Administrative Procedure Act. In addition, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information for the following reasons. First, the FHWA has already issued an informal guidance memorandum in February 1992, informing its regional offices and the State transportation departments of the changes effected by sections 1041 and 1048, so the FHWA has apprised interested persons of the actions covered by this final rule. Second, in revising these regulations to conform to the ISTEA, the FHWA is not interpreting the statute nor exercising discretion in a way that could be meaningfully affected by public comment. The FHWA believes that the Administrative Procedure Act does not require prior notice and opportunity for public comment on the limited interpretation of section 1041(a) as it relates to coating. See 5 U.S.C. 553(b).

This final rule is made effective upon publication. Section 1019 of the ISTEA, reinstating regulatory restrictions of the use of convict produced materials, section 1041(a), requiring that 23 CFR 635.410 be applied so that the process of coating is included in the Buy America program, and section 1048(a), adding iron to the material covered under the Buy America provisions, are self implementing statutory provisions. Therefore, these amendments are merely technical ones which conform the relevant regulatory provisions to the ISTEA, which itself effected these changes. For this reason, and to immediately implement congressional mandates, the FHWA finds that there is good cause for publishing this rule less than 30 days before its effective date, as is ordinarily required under section 553(d) of the Administrative Procedure Act. Additionally, the Administrative Procedure Act provides that the 30-day delay in effective date requirement does not apply to interpretative rules such as the FHWA's amendment to 23 CFR 635.410 incorporating the FHWA's limited interpretation of section 1041(a) as it relates to coating.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. It is anticipated that this rule will have a minimal economic impact. Hence, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that this document has federalism implications. However, we believe that the federalism implications are mitigated by the need to meet requirements mandated by statute, and the agency has allowed States the maximum administrative discretion to meet the intent of the statute. Therefore, the FHWA certifies that this action has insufficient federalism implications to warrant the preparation of a separate Federalism Assessment.

*Executive Order 12372 (Intergovernmental Review)*

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

Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

*Regulatory Identification Number*

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 635**

Government contracts, Grant programs—transportation, Highways and roads.

In consideration of the foregoing, the FHWA hereby amends part 635, subpart D of ch. I of title 23, Code of Federal Regulations, as set forth below.

Issued on: July 13, 1993.

**Rodney E. Slater,**

*Federal Highway Administrator.*

## PART 635—CONSTRUCTION AND MAINTENANCE

1. The authority citation for part 635 is revised to read as follows:

**Authority:** 23 U.S.C. 112, 113, 114, 117, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601, *et seq.*; 49 CFR 1.48(b); §§ 635.410 and 635.417 are also issued under secs. 1019, 1041(a) and 1048, Pub. L. 102–240, 105 Stat. 1914; sec. 10, Pub. L. 98–229, 98 Stat. 55; sec. 165, Pub. L. 97–424, 96 Stat. 2136; sec. 112, Pub. L. 100–17, 101 Stat. 132.

### Subpart D—General Material Requirements

2. In § 635.410 paragraphs (b) (1) through (4) and (c)(1)(ii) are revised to read as follows:

**§ 635.410 Buy America requirements.**

* * * * *

(b) * * *

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

* * * * *

(c)(1) * * *

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

* * * * *

3. In § 635.417, the introductory text of paragraph (a) is revised to read as follows:

**§ 635.417 Convict produced materials.**

(a) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:

* * * * *

[FR Doc. 93–17192 Filed 7–20–93; 8:45 am]

BILLING CODE 4910–22–P

## POSTAL RATE COMMISSION

**39 CFR Part 3001**

**[Docket No. RM93–3; Order No. 981]**

### Rules of Practice and Procedure: Correction and Conforming Changes; Other Minor Corrections and Miscellaneous Editorial Revisions

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** This document identifies conforming changes; makes a nomenclature change; and makes other minor editorial changes to the Commission's rules of practice and procedure.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, Acting Legal Advisor, 1333 H Street, NW., Washington, DC 20268–0001, telephone (202) 789–6820.

**SUPPLEMENTARY INFORMATION:** A review of the Commission Rules of Practice and Procedure, involving the comparison of Commission orders with the version appearing in the Code of Federal Regulations, 39 CFR 3001.1 through 3001.117, reveals certain inconsistencies. First, it appears that the changes made effective by Commission Order No. 708 have not been incorporated. Second, Commission Order No. 839, issued August 22, 1989, amended among other sections of the Commission Rules of Practice and Procedure, Rule 54(j), 39 CFR 3001.54(j). That action inadvertently superseded Commission Order No. 835, issued August 9, 1989, which added the following language to rule 54(j):

(7) For third-class bulk mail, subject to paragraph(a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

This provision is revived and renumbered as rule 54(l)(2). Third and finally, minor corrections should be made to clarify language and reflect accurately Commission action in Orders Nos. 363, 492, 529, 640, 676, 697, and 836.

**List of Subjects in 39 CFR Part 3001**

Administrative practice and procedure, Postal Service.

For the reasons stated above, the Commission corrects and makes other conforming and miscellaneous changes to the Commission Rules of Practice and Procedure (39 CFR 3001.2 through 3001.116) as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; [5 U.S.C. 553], 80 Stat. 383.

**§ 3001.2 [Added and Reserved]**

2. Section 3001.2 is added and reserved.

**§ 3001.5 [Amended]**

3. In § 3001.5(g), change "has been permitted to intervene" to "has intervened."

**§ 3001.5 [Amended]**

4. In § 3001.5(h), change "granted limited participation" to "who are limited participators".

**§§ 3001.6, 3001.7, 3001.11, 3001.12, 3001.20, 3001.23, 3001.24, 3001.26, 3001.31, 3001.33, 3001.36, 3001.39, 3001.54, 3001.83, 3001.115 [Amended]**

5. In §§ 3001.6(a), (b); 3001.7(a)(1)(ii) and (iii); 3001.7(c)(1) and (d)(1); 3001.11(e); 3001.12(g); 3001.20(b); 3001.23(b); 3001.24(b); 3001.26(a); 3001.31(k)(3)(iv); 3001.33(e); 3001.36; 3001.39(a); 3001.54(p)(2); 3001.83(e); 3001.115(a), change "his" to read "his/her".

**§§ 3001.6, 3001.7, 3001.11, 3001.20, 3001.23, 3001.24, 3001.25, 3001.42 [Amended]**

6. In §§ 3001.6(b) and (c); 3001.7(b)(3); 3001.11(e); 3001.20(e); 3001.23(b) and (d); 3001.24(b) and (e); 3001.25(e); 3001.42(c)(2), change "he" to read "he/she".

**§ 3001.7 [Amended]**

7. In § 3001.7(a)(1)(i), change "Commission" to "Commissioners".

8. In § 3001.7(b)(2), change period after "proceeding" to a semi-colon.

**§ 3001.9 [Amended]**

9. In § 3001.9(a), change "20268" to "20268–0001".

**§ 3001.10 [Amended]**

10. In § 3001.10(a), change "left-handed" to "left-hand".

**§ 3001.11 [Amended]**

11. In § 3001.11(a), change "petition to intervene" to "notice of intervention".

**§ 3001.12 [Amended]**

12. In § 3001.12(e), change "first class mail" to "First-Class Mail"; change "Assistant General Counsel, Postal Rate and Mail Classifications Office" to "Assistant General Counsel, Office of Rate and Classification Law" and change zip code "20260" to 20260–1140.

**§ 3001.13 [Amended]**

13. In § 3001.13, change "hearing, which" to "hearing. Proceedings".

**§ 3001.17 [Amended]**

14. In § 3001.17(c)(3), change comma after "postal services" to semi-colon.

15. In § 3001.17(c)(4), change "petitions for leave to intervene" to "notices of intervention".

16. In § 3001.19, the first sentence is revised to read as follows:

**§ 3001.19 Notice of prehearing conference or hearing.**

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17, the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. * * *

17. In § 3001.19, in the second sentence, remove "and" before "the time and place".

**§ 3001.20 [Amended]**

18. In § 3001.20(b), change "petitioner's" to "intervenor's"; "petitioner" to "intervenor"; and "petition" to "notice".

19. In § 3001.20(c), change "interventions" to "intervention".

20. In § 3001.20a, introductory text, change period after "provisions" to semi-colon.

21. In § 3001.20a(a), change "requestor's" to "intervenor's".

22. In § 3001.20b(b), change "they are" to "it is".

**§ 3001.21 [Amended]**

23. In § 3001.21(b), change "statutary" to "statutory".

**§ 3001.23 [Amended]**

24. In § 3001.23(d), remove "he" before "may be withdrawn by the Commission".

**§ 3001.24 [Amended]**

25. In § 3001.24(d)(1), replace period at end of statement with a semi-colon.

26. In § 3001.24(d)(2), change "with regard to" to "concerning"; replace period at end with a semi-colon.

27. In § 3001.24(d)(3), (4), (5), (6), (7), (8), (9), (10), replace period at end of each statement with a semi-colon.

28. In § 3001.24(d)(11), replace period at end of statement with "; and".

**§ 3001.25 [Amended]**

29. In §§ 3001.25(c), 3001.26(c) and 3001.27(c), change "man-hours" to "work hours".

**§ 3001.26 [Amended]**

30. In § 3001.26(a), change "upon which" to "upon whom".

**§ 3001.31 [Amended]**

31. In § 3001.31(b), add phrase "document and to offer in evidence in like manner other material" after "opportunity to examine the entire".

32. In § 3001.31(d), change "economical" to "economic".

33. In § 3001.31a(b), change "Officers" to "officers".

34. In § 3001.31a(c) in the third sentence change "circumstrances" to "circumstances".

**§ 3001.33 [Amended]**

35. In § 3001.33(h), change "him" to read "him/her."

**§ 3001.36 [Amended]**

36. In § 3001.36, remove words "before him" appearing after "oral argument"; remove word "his" before "hearing such argument".

**§ 3001.42 [Amended]**

37. In § 3001.42a, remove "§ " in last sentence.

**§ 3001.43 [Amended]**

38. In § 3001.43(e)(4), replace period at end of sentence with a colon.

39. The address "2000 L Street, NW., Room 500, Washington, DC. 20268" is revised to read "1333 H Street, NW., Suite 300, Washington, DC. 20268–0001" in § 3001.43(e)(4)(i).

40. In § 3001.43(f)(1), change "his or her" to "his/her" and in the third sentence, change semi-colon after "of this section" to a comma.

41. In § 3001.43(g)(3), change "one copy to each Member," to "one copy to each Commissioner,".

42. In § 3001.43(g)(5), change "Member" to "Commissioner".

43. In § 3001.43(g)(6), in the first sentence change "Commission Member" to "Commissioner" and change "date" to "day"; and in the last sentence change "Docket file" to "docket file".

**§ 3001.54 [Amended]**

44. In § 3001.54(h)(5)(v)(*a*), replace period after phrase "for each time period" with a colon.

45. In § 3001.54(l), redesignate existing paragraph as paragraph (l)(1) and add the following paragraph (l)(2):

**§ 3001.54 Contents of formal request.**

* * * * *

(l) * * *

(1) * * *

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort

level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

* * * * *

46. In § 3001.54(o) (2)(i) and (3), change "paragraphs (b) through (o)" to "paragraphs (b) through (n)".

47. In § 3001.54(p)(2), change "paragraph (q)" to "paragraph (p)(1)".

48. In § 3001.54(r), change "paragraphs (b) through (r)" to "paragraphs (b) through (q)".

**§ 3001.55 [Amended]**

49. In § 3001.55, remove phrase "or granting petitions to intervene"; change "parties permitted to intervene" to "intervenors"; remove "such" before "service" and change "service" to "Service"; change "have been granted limited participation" to "are limited participators".

**§§ 3001.57, 3001.37c [Amended]**

50. In §§ 3001.57 and 3001.57c, in the heading change "express mail" and "Express mail" respectively to "Express Mail".

**§ 3001.63 [Amended]**

51. In § 3001.63, change "reply" to "rely".

**§ 3001.64 [Amended]**

52. In § 3001.64(c)(1) and (2), change period at end of each paragraph to semi-colon.

**§ 3001.65 [Amended]**

53. In § 3001.65, in first sentence remove clause "or granting petitions to intervene" and change "parties permitted to intervene" to "intervenors"; in second sentence remove "Such" before "service", change "service" to "Service"; and change "have been granted limited participation" to "are limited participators".

**§ 3001.75 [Amended]**

54. In § 3001.75, remove "or granting petitions to intervene" in first sentence and change "parties permitted to intervene" to "intervenors"; in second sentence remove "Such" before "service", change "service" to "Service" and change "have been granted limited participation" to "are limited participators".

**§ 3001.83 [Amended]**

55. In § 3001.83(a), change colon at end of paragraph to a semi-colon.

**§ 3001.101 [Amended]**

56. In section 3001.101, add phrase "on a periodic basis" after "Secretary of the Commission".

**§ 3001.102 [Amended]**

57. In § 3001.102(a)(1), change "previous" to "prior".

58. In § 3001.102(d), introductory text, change "provided" to "filed".

59. In § 3001.102(d)(4), change "Notices" to "Notice".

**§ 3001.110 [Amended]**

60. The address "2000 L Street, NW., Washington, DC 20268" is revised to read "1333 H Street, NW., suite 300, Washington, DC. 20268–0001" in § 3001.110.

**§ 3001.111 [Amended]**

61. In § 3001.111(b), change "representation" to "representative" in first sentence; in first and third sentences, change "petition for leave to intervene" to "notice of intervention"; and change "petition" to "notice" in second and third sentences. In last sentence, change "petitions for leave to intervene" to "notices of intervention".

**§ 3001.114 [Amended]**

62. In § 3001.114(a), change "petition for leave to intervene" to "notice of intervention".

**§ 3001.115 [Amended]**

63. In § 3001.115, change heading from "Briefs on appeal" to "Participant statement or brief."

**§ 3001.116 [Amended]**

64. The address "2000 L Street NW., suite 500, Washington, DC 20268" is revised to read "1333 H Street, NW., suite 300, Washington, DC 20268–0001" in § 3001.116.

Issued by the Commission on June 28, 1993.

Cyril J. Pittack,

*Acting Secretary.*

[FR Doc. 93–17204 Filed 7–20–93; 8:45 am]

BILLING CODE 7710–FW–M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–300281A; FRL–4630–8]

RIN 2070–AB78

### Cross-Linked Polyurea-Type Encapsulating Polymer; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is establishing an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. This regulation replaces the current exemption for cross-linked polyurea-type encapsulating polymer when used as an encapsulating material in pesticide formulations applied prior to planting under 40 CFR 180.1039. This regulation was requested by ICI Americas, Inc.

**EFFECTIVE DATE:** This regulation becomes effective on July 21, 1993.

**ADDRESSES:** Written objections, identified by the document control number [OPP-300281A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 28, 1993 (58 FR 25792), EPA issued a proposed rule announcing that ICI Americas, Inc., Wilmington, DE 19897, had submitted a pesticide petition (PP 2E4146) to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations applied to growing crops only. The regulation replaces the current exemption from the requirement of a tolerance for this chemical under 40 CFR 180.1039. Because neither the amount nor the use in the formulation has any bearing on the exemption, reference to a specific amount has been dropped.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose;

wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The scientific data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA is establishing the exemption from the requirement of a tolerance as set forth below.

Any person adversely affected by this regulation may, within 30 days after the date of publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 9, 1993.

**Douglas D. Campt,**
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) table is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

**§ 180.1001 Exemptions from the requirement of a tolerance.**

* * * *
*

(d) * * *

| Inert ingredients | Limits | Uses |
|---|---|---|
| * * | * * * | * * |
| Cross-linked polyurea-type encapsulating polymer ..... | ..... | Encapsulating agent. |
| * * | * * * | * * |

* * * *
*

[FR Doc. 93–17061 Filed 7–20–93; 8:45 am]
BILLING CODE 6560–50–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 640

**[Docket No. 930491–3167; I.D. 032993A]**

### Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

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

**ACTION:** Final rule.

**SUMMARY:** NMFS amends the regulations that implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). This final rule modifies the 2-day special recreational fishing season in the exclusive economic zone (EEZ) off Florida by changing the season from the last weekend in July to the last Wednesday and Thursday in July; increasing the daily bag and possession limit to 12 spiny lobsters, except off Monroe County, Florida, where the limit remains 6 spiny lobsters; limiting harvesting of spiny lobster to diving and the use of bully nets or hoop nets; and prohibiting harvesting of spiny lobster by diving at night off Monroe County, Florida. The intended effects of this rule are to enhance cooperative Florida/Federal management of the spiny lobster fishery by implementing Florida's rules in the EEZ off Florida, reduce fishing effort off Monroe County, Florida, during the 2-day special recreational season, protect the valuable spiny lobster resource, reduce environmental damage, and otherwise improve the effectiveness of necessary regulations.

**EFFECTIVE DATE:** July 24, 1993.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 813–893–3161.

**SUPPLEMENTARY INFORMATION:** The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the FMP, prepared and amended by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 640, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act)

The FMP contains a regulatory amendment procedure for implementing specified gear and harvest restrictions applicable to the spiny lobster fishery in the EEZ. In accordance with that regulatory amendment procedure, the

Florida Marine Fisheries Commission (FMFC) requested the Director, Southeast Region, NMFS (Regional Director), to implement in the EEZ off Florida, with the Councils' oversight, modifications to certain gear and harvest limitations that were proposed by the FMFC and approved by the Governor and Cabinet of Florida for implementation in Florida's waters.

Specifically, the FMFC requested adoption in the EEZ off Florida of (1) a change in the dates of the special 2-day recreational season from the last weekend in July to the last Wednesday and Thursday in July; (2) an increase in the daily bag and possession limit during that season from six to twelve lobsters in the EEZ off Florida, except off Monroe County, where the limit would remain at six; (3) the elimination of trap fishing in the EEZ off Florida during the 2-day season; and (4) a prohibition on night diving for lobster off Monroe County, Florida, during the 2-day season. The FMFC requested implementation of these changes before the start of their 2-day season on July 28–29, 1993. The procedural requirements for the regulatory amendment procedure and the background and rationale for the requested changes were contained in the proposed rule (58 FR 32639, June 11, 1993) and are not repeated here.

One comment was received on the proposed rule.

*Comment.* The commenter stated his belief that the intention of the rulemaking is to increase the number of spiny lobster available to the commercial trap fishery.

*Response:* The intent of the rulemaking is neither to increase nor decrease the commercial harvest of spiny lobster. Rather, the intent is to reduce the recreational effort off Monroe County, Florida, during the special 2-day recreational season.

**Classification**

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this final rule is necessary for the conservation and management of the spiny lobster fishery and that it is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator determined that the rule is not a "major rule" under E.O. 12291.

The Councils prepared a regulatory impact review for this rule, the economic effects of which were summarized in the proposed rule.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, because revenues are expected to be redistributed but not foregone. As a result, a regulatory flexibility analysis was not prepared.

The Councils prepared an environmental assessment (EA) for this action. Based on the EA, the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Florida, the only state affected. This determination was submitted for review by the responsible Florida agencies under section 307 of the Coastal Zone Management Act. The Florida agencies provided information on changes in Florida's legislation on the spiny lobster fishery, such changes not having a substantive effect on implementation of this rule; pointed out a minor error in wording in the Councils' regulatory amendment, which has been corrected; and agreed with the determination of consistency.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act and does not contain policies with federalism implication sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator finds that a delay in implementing this rule beyond July 24, 1993, would unnecessarily prolong incompatible Florida/Federal regulations on spiny lobster, which would be contrary to the public good. In particular, delay beyond July 24 would result in two separate 2-day special recreational fishing seasons in 1993, one in the EEZ off Florida on July 24–25 and the other in Florida's waters on July 28–29. Based on widespread publicity of the expected change in the dates of the 2-day recreational season in the EEZ, the vast majority of the approximately 50,000 people who participate in the spiny lobster fishery during the recreational season have made hotel/motel reservations in the Florida Keys for the July 28–29 dates. Concentration of the entire fishing effort in Florida's waters on these dates would further aggravate environmental damage in these waters. In addition, having two seasons would decrease the effectiveness of Joint Florida/Federal enforcement efforts and increase the cost of enforcement. Accordingly, the Assistant Administrator finds that, under section 553(d)(3) of the Administrative Procedure Act, good cause exists not to delay for 30 days the effective date of this final rule.

**List of Subjects in 50 CFR Part 640**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 15, 1993.

**Gary Matlock,**

*Acting Assistant Administrator, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 640 is amended as follows:

## PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

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

2. In § 640.2, a new definition for "Off Monroe County, Florida" is added in alphabetical order to read as follows:

**§ 640.2 Definitions.**

* * * * *

*Off Monroe County, Florida* means the area from the Florida coast to the outer limit of the EEZ between a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) and a line extending directly west from the Monroe/Collier County, Florida boundary (25°48.0'N. latitude).

* * * * *

3. In § 640.7, in paragraph (g), the comma before "as specified in § 640.21(a)" is revised to semicolon, and paragraphs (l) and (p) through (s) are revised to read as follows:

**§ 640.7 Prohibitions.**

* * * * *

(l) Possess a spiny lobster harvested by prohibited gear or methods; or possess on board a fishing vessel any dynamite or similar explosive substance; as specified in § 640.20(b) and § 640.22 (a)(1) and (a)(3).

* * * * *

(p) Possess spiny lobsters in or from the EEZ in an amount exceeding the daily bag and possession limit specified in § 640.23 (a) or (b), except as authorized in § 640.23 (c) and (d).

(q) Possess spiny lobsters aboard a vessel that uses or has on board a net or trawl in an amount exceeding the limits, as specified in § 640.23(d).

(r) Operate a vessel that fishes for or possesses spiny lobster in or from the EEZ with spiny lobster aboard in an amount exceeding the cumulative bag

and possession limit, as specified in § 640.23(g).

(s) Transfer or receive at sea spiny lobster in or from the EEZ caught under the bag and possession limits, as specified in § 640.23(h).

* * * * *

4. In § 640.20, paragraph (b) is revised to read as follows:

**§ 640.20 Seasons.**

* * * * *

(b) *Special recreational fishing seasons.*

(1) *EEZ off Florida.* There is a 2-day special recreational fishing season in the EEZ off Florida on the last Wednesday and successive Thursday of July each year during which fishing for spiny lobster is limited to diving or use of a bully net or hoop net. (See § 640.22(a) for general prohibitions on gear and methods.) In the EEZ off Monroe County, Florida, no person may harvest spiny lobster by diving at night, that is, from 1 hour after official sunset to 1 hour before official sunrise, during this 2-day special recreational fishing season.

(2) *EEZ other than off Florida.* There is a 2-day special recreational fishing season in the EEZ other than off Florida during the last Saturday and successive Sunday of July each year during which fishing for spiny lobster may be conducted by authorized gear and methods other than traps. (See § 640.22(a) for general prohibitions on gear and methods.)

* * * * *

**§ 640.22 [Amended]**

5. In § 640.22, in paragraph (a)(2), the reference to: "§ 640.23(c)" is revised to read "§ 640.23(d)".

6. In § 640.23, paragraphs (b) through (g) are redesignated as paragraphs (c) through (h); in newly designated paragraph (d), in the third sentence, the reference to "this paragraph (c)" is revised to read "this paragraph (d)"; in newly designated paragraph (e), the reference to "paragraph (b) of this section" is revised to read "paragraph (c) of this section"; in newly designated paragraph (f), the reference to "paragraphs (a) or (c) of this section" is revised to read "paragraphs (a), (b), or (d) of this section"; in newly designated paragraph (g), the reference to "paragraph (a) of this section" is revised to read "paragraphs (a) and (b) of this section"; in newly designated paragraph (h), the reference to "paragraph (a) or (c) of this section" is revised to read "paragraphs (a), (b), or (d) of this section"; paragraph (a) is revised; and new paragraph (b) is added to read as follows:

**§ 640.23 Bag and possession limits.**

(a) *Commercial and recreational fishing season.* Except as specified in paragraphs (c) and (d) of this section, during the commercial and recreational fishing season specified in § 640.20(a), the daily bag and possession limit of spiny lobster in or from the EEZ is six per person.

(b) *Special recreational fishing seasons.* During the special recreational fishing seasons specified in § 640.20(b), the daily bag and possession limit of spiny lobster—

(1) In or from the EEZ off Monroe County, Florida is six per person;

(2) In or from the EEZ off Florida other than off Monroe County, Florida is twelve per person; and

(3) In or from the EEZ other than off Florida is six per person.

* * * * *

[FR Doc. 93-17272 Filed 7-16-93; 3:04 pm]
BILLING CODE 3510-22-M

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 655

**[Docket No. 921221-3162; ID No. 101392B]**

### Atlantic Mackerel, Squid, and Butterfish Fisheries

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

**ACTION:** Final specifications for the 1993 and 1994 Atlantic mackerel, squid, and butterfish fisheries.

**SUMMARY:** NMFS issues these final specifications for the 1993 and 1994 fishing years for Atlantic mackerel, squid, and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for up to 3 consecutive fishing years. This action is intended to fulfill this requirement and promote the development of the U.S. Atlantic mackerel, squid, and butterfish fisheries.

**EFFECTIVE DATES:** January 1, 1993, through December 31, 1994.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council's "quota paper" and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901. Copies of the environmental assessment are available from Richard B. Roe, Northeast Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, 508-281-9104 or Richard Seamans, 508-281-9244.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 655. These regulations stipulate that the Secretary will publish a notice specifying the initial annual amounts of the initial optimum yield (IOY) as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years.

Since an update of the Atlantic mackerel stock assessment will be forthcoming in 1994, the Council has chosen to recommend specifications for 1993 and 1994 only. Procedures for determining the initial annual amounts are found in § 655.22.

Proposed initial specifications for the 1993 and 1994 Atlantic mackerel, squid, and butterfish fisheries were published on December 22, 1992 (57 FR 60786).

The following table contains the final initial specifications for Atlantic mackerel, *Loligo* squid, *Illex* squid, and butterfish. These specifications are based on the recommendations of the Mid-Atlantic Fishery Management Council and public comment.

TABLE.—FINAL INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEARS, JANUARY 1 THROUGH DECEMBER 31, 1993 AND JANUARY 1 THROUGH DECEMBER 31, 1994.

[In metric tons (mt)]

| Specifications | Squid | | Atlantic Mackerel | Butterfish |
|---|---|---|---|---|
| | *Loligo* | *Illex* | | |
| Max OY [1] | 44,000 | 30,000 | [2]N/A | 16,000 |
| ABC [3] | 44,000 | 30,000 | 850,000 | 16,000 |
| IOY | 44,000 | 30,000 | 120,000 | 10,000 |
| DAH | 44,000 | 30,000 | [4]120,000 | 10,000 |
| DAP | 44,000 | 30,000 | 50,000 | 10,000 |
| JVP | 0 | 0 | 55,000 | 0 |
| TALFF | 0 | 0 | 0 | 0 |

[1] Max OY as stated in the FMP;
[2] Not applicable; see the FMP;
[3] IOY can rise to this amount;
[4] Contains 15,000 mt. projected recreational catch based on the formula contained in the regulations (50 CFR part 655).

In addition to these final initial specifications, the Regional Director imposes four special conditions for the 1993 and 1994 Atlantic mackerel fisheries as follows: (1) Joint ventures are allowed, but river herring bycatch south of 37°30′ N. latitude may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Director will monitor fishing operations and manage harvest to reduce impacts on marine mammals in prosecuting the Atlantic mackerel fishery; (3) the IOY for Atlantic mackerel may be increased during each fishing year, but the total will not exceed 200,000 mt; and (4) applications from a particular nation for joint ventures for 1993 or 1994 will not be approved until the Regional Director determines, based on an evaluation of performances, that the nation's purchase obligations for 1991 and previous years have been fulfilled.

**Comments and Responses**

Nine sets of comments on the proposed initial specifications were received during the comment period. One set of comments addressed the specifications for *Loligo* and *Illex* squids. All commenters addressed the specification of zero TALFF for the Atlantic mackerel fishery. Six sets of comments opposed zero TALFF and three sets of comments supported zero TALFF. All commenters favored joint venture processing in the Atlantic mackerel fishery.

*Comment:* The ongoing capitalization of the squid fishery in 1992, as the wetboats convert to refrigerated seawater systems (RSW), has greatly increased the physical capacity to take the squid resources. There is no longer any ability to allocate to the JVP without disenfranchising the freezer trawler and RSW fleet. NMFS' proposed reservation of the squid quotas to the DAP is required under the law, and would promote the continuing development of the U.S. industry in the Atlantic.

*Response:* NMFS agrees that the capacity of the squid fishery has expanded with the conversion of vessels to RSW systems. A record harvest of approximately 17,000 mt of *Illex* squid in 1992, up from 11,700 mt in 1991, confirms this. Circumstances at this time require the reservation of squid quotas to DAP; however, NMFS recognizes the dynamic nature of the squid fisheries, and the Council, via the annual quota paper, must continue to defend their annual recommendations for specifications in these fisheries.

*Comment:* NMFS and the Council would be fulfilling the intent of Congress when it strengthened the promotional role of the Councils by enacting the American Fisheries Promotion Act of 1980 (The Act). Commonly called the "Breaux Bill," the Act made three major amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act) in an attempt to accelerate dramatically the phaseout of the foreign fleets and the growth in the domestic harvesting and processing sectors. Section 233 of the Act amended section 2(b)(6) of the Magnuson Act by declaring as a purpose of the Magnuson Act the need to "ensure that optimum yield determinations promote the development of the U.S. fishing industry."

*Response:* Atlantic mackerel caught and processed by foreign vessels in a directed fishery may compete directly with U.S. products in targeted markets. NMFS recognizes that the heavily capitalized and often subsidized vessels employed by foreign nations can produce mackerel at a lesser cost than the present U.S. fleet and, therefore, undercut prices needed to promote the growth of the domestic fishery. The U.S. processors of Atlantic mackerel must establish a base in foreign markets upon which the U.S. industry can grow. The specification of TALFF can be an impediment to this potential growth. Conversely, the specification of zero TALFF might promote the growth of the domestically produced product.

*Comment:* In its assessment of relative benefits of zero TALFF to the Nation, NMFS should acknowledge in the final rule that there is significant, albeit unquantified, value which can be attributed to employment growth and the ripple effect of such economic activity in the local economies.

*Response:* NMFS recognizes that there may be external benefits of implementing a zero TALFF specification. However, the precise or accurate measurement of a "ripple" or multiplier effect on local or regional economies cannot be accomplished at this time. NMFS also recognizes that there may be external costs of implementing zero TALFF that may appear in the form of geopolitical considerations including political, leverage, goodwill, and diplomacy. NMFS has considered these non-quantifiable benefits and costs in issuing a zero TALFF specification for the 1993/1994 Atlantic mackerel fisheries.

*Comment:* A pro-TALFF argument concurrent with the development of a control date is not consistent policy. This serves only to place restrictions on the domestic fishermen, many of whom are soon to be displaced, while opening access to foreign interests.

*Response:* NMFS notes that establishment of a control date does not place restrictions on domestic fishermen. A control date is intended only to advise the public of potential

risks of entering the fishery after the control date.

*Comment:* The industry has worked very hard and invested large sums of money to develop both at-sea and onshore processing facilities to harvest, process, and sell Atlantic mackerel. These investments, which total many millions of dollars and have resulted in many new jobs in this community, were made with the knowledge that foreign fishing was being phased out. Industry supports and has participated in Federal joint ventures and State internal waters processing projects and feels that the United States must continue in efforts to 'Americanize' the fishery. Any release of TALFF would send the wrong message to those who have invested and are continuing to invest in the growth of this fishery.

*Response:* NMFS and the Council also view TALFF as an impediment to continued domestic investment in the Atlantic mackerel fishery at this time.

*Comment:* The proposed specification of zero TALFF conflicts with the known biological fact that a large Atlantic mackerel biomass that is not adequately harvested perpetuates the present reduced biomasses for higher valued species such as haddock, and thereby reduces the commercial success of U.S. boats fishing for those higher value species.

*Response:* Unpublished studies that exist on this subject are considered too preliminary to describe authoritatively the extent of any ecological relationship between mackerel and haddock.

*Comment:* The proposed specification of zero TALFF compels U.S. boats, which could be utilized effectively as catcher boats for foreign fishing vessels, to remain at the dock, thereby reducing vessel revenues and sacrificing badly needed jobs and incomes for their crews.

*Response:* NMFS recognizes the need to utilize the catcher boats and their economic impacts on individuals and communities involved. A successful JVP has already occurred in the absence of TALFF, and the Council and NMFS believe that a zero TALFF should not be an impediment to future joint ventures. It may be due to a decision made by a foreign company not to undertake a joint venture in the absence of TALFF that causes U.S. catcher boats to remain at the dock. Successful joint ventures have been conducted without allocations to vessels of a country for directed fishing. In addition, there is no assurance that a foreign vessel, once assured of availability of fish for a direct harvest, will necessarily vigorously pursue the joint venture.

NMFS reviewed the estimated domestic annual harvest (DAH) for 1993 and the portion of the harvest that would be processed by U.S. fish processors. On that basis, it initially found that 35,000 mt of the Atlantic mackerel DAH would not be used by domestic processors. That amount was later increased to 55,000 mt when NMFS received more current information in the form of another request for JVP to support a greater DAH and JVP after the proposed specifications were published. Since there was no similar information presented to indicate that the additional 20,000 mt would be needed for the DAP, the full increase in the DAH was then included as part of the JVP.

*Comment:* With respect to joint ventures involving Russian vessels, a zero TALFF specification would undercut the U.S. and allied nations' efforts to foster economic growth that will occur in each participating country from increased trade, an overriding U.S. foreign and trade policy objective.

*Response:* The specification of zero TALFF, in and of itself, does not constitute an obstacle to trade. Russian vessels that existed under the former "Soviet Union" have, in the recent past, purchased large quantities of Atlantic mackerel from both joint ventures (24,000 mt in 1990 and 11,000 mt in 1991) and internal water processing (1,923 mt in 1992) without TALFF. NMFS realizes that TALFF would serve to enhance the profits of foreign partners in joint venture schemes. However, the "fish and chips" policy of the past, where amounts of JVP and purchases of U.S. processed product were conditions of a TALFF fishery, is now viewed by NMFS to be an impediment to the development of the U.S. fishery.

*Comment:* TALFF makes the economics of a joint venture more viable. Offshore processing operations can average their expenses with the lower costs of directed catch. This helps U.S. mackerel compete on the world market. Strict joint ventures or internal water processing projects are not profitable. TALFF contributes to the U.S. government budget via a poundage fee of $58.00 per metric ton. The United States needs to increase its volume of scale to lower unit costs and be more competitive on international markets because the U.S. domestic market is very limited. The commenter recommends a TALFF of 25,000 mt per year for 1993 and 1994.

*Response:* NMFS recognizes that pursuing a "fish and chips" policy will yield benefits to the Nation, especially in the short term. However, the goal of NMFS policy is to secure long-term growth and stability for the Atlantic mackerel fishery. This can happen only in the absence of TALFF.

*Comment:* The key assumption in the Council's benefit-cost analysis is that U.S. caught and processed mackerel tonnages will increase by 20 percent each year for 10 years from 1991 through 2000, and beyond. This assumption is seriously flawed and has already been proven incorrect. According to NMFS, U.S. landings in 1992 will be no more than 12,500 mt, which is more than 7,000 mt less than the approximately 20,000 mt needed to validate the benefit-cost analysis. The record of the 1992 fishery demonstrates that the no-TALFF policy is not contributing to the development of the U.S. fishery.

*Response:* To complement the Council's cost-benefit analysis, which assumed zero domestic growth with the allocation of TALFF and 20 percent per year domestic growth with zero TALFF, NMFS performed a sensitivity analysis that examined the effects of TALFF under different conditions and assumptions. Results of the sensitivity analysis indicated that large TALFF allocations may yield the highest net national benefit under certain conditions and assumptions, especially when there is zero growth in domestic landings. When there is moderate growth in domestic landings (5 percent per year), and/or joint venture and TALFF allocations are rapidly transferred to domestic landings (50 percent per year), then there is little difference, in terms of net national benefit, between zero TALFF and large TALFF allocation policies.

*Comment:* Any direct foreign mackerel fishing carried out by Community (European Economic Community) fishing vessels will be mainly intended for West African markets that are not of interest to the U.S industry. The specifications do not consider the advantages to the U.S. industry of such cooperation with Community enterprises. After all, this is the philosophy behind the Governing International Fisheries Agreements.

*Response:* The U.S. industry has not excluded West Africa as a potential market for U.S. processed Atlantic mackerel. This is especially true with regard to the placing of Atlantic mackerel on the list of commodities for inclusion under the Public Law 480 program of the Department of Agriculture. This program provides credit to underdeveloped nations to purchase U.S. produced agricultural and fisheries products.

Certain U.S. processors and members of Congress based their opposition to allocations to Russian vessels on concerns that the production from such vessels would be landed in certain foreign markets developed by U.S. processors. NMFS sought to alleviate these concerns through discussions and correspondence with the Russian fishing representatives, in particular by seeking assurances that production would be landed in the Russian Federation for domestic consumption. That matter was not fully resolved because the Russian fishing companies concluded that delays in these specifications made the prosecution of a spring mackerel fishery no longer feasible.

## Changes From the Proposed Specifications

Several changes from the proposed specifications regarding Atlantic mackerel are made in these final specifications. The specification for IOY, and in turn, DAH, and JVP were increased 20,000 mt to accommodate potential applicants for a JVP fishery in Atlantic mackerel. In addition to an application pending for 10,000 mt of JVP, a firm has made inquiries regarding an additional 20,000 mt of JVP. The proposed initial specifications called for a total of 35,000 mt for the 1993 and 1994 fisheries. Since it is the policy of both the Council and NMFS to promote JVP in this fishery, the Regional Director has increased the DAH and IOY to 120,000 mt from the proposed amount of 100,000 mt to provide for a JVP allocation of 55,000 mt from a proposed level of 35,000 mt. This increase is considered to be in the best overall interest of the Nation.

## Classification

This action is authorized by 50 CFR part 655 and complies with Executive Order 12291 and the National Environmental Policy Act.

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

## List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: July 15, 1993.

**Nancy Foster,**

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 93–17273 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–22–M

# Proposed Rules

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 93–NM–85–AD]

### Airworthiness Directives; Fokker Model F27 Rough Field Version (RFV) Series Airplanes, Excluding Model F27 Mk 050 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 RFV series airplanes. This proposal would require inspection of the main landing gear (MLG) legs to determine if parts are missing or damaged, and modification, if necessary; and periodic measurements of the extension of each MLG shock absorber sliding member. Additionally, this proposal would provide for the accomplishment of a certain modification as optional terminating action for the periodic measurements. This proposal is prompted by reports of overextension of the MLG sliding member due to missing parts in the MLG leg assembly. The actions specified by the proposed AD are intended to prevent loss of the MLG sliding member, which could result in reduced structural integrity of the MLG.

**DATES:** Comments must be received by September 14, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314; and Dowty Aerospace, Cheltenham Road, Goucester GS2 9QH, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–85–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–85–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 RFV series airplanes. The RLD advises that one operator recently reported an incident in which a main landing gear (MLG) sliding member over-extended. The sliding member was then restrained only by the torque links. This situation put the torque links in an overcenter position at touch down. Subsequently, the torque link center joint pin failed, which then led to the loss of torsional stability of the wheels, and finally to the loss of the sliding member itself. Further investigation through disassembly of the MLG leg revealed that one castellation on the upper end of the piston rod, part number 200563600, was missing. This condition allowed the dowel pin in the adaptor, part number 200532642, to come out of its position; this condition permitted the piston rod to unscrew from the adaptor and thereby eliminated the sliding member extension out-stop. Loss of the MLG sliding member could lead to loss of directional stability of the wheels and, subsequently, could result in reduced structural integrity of the MLG.

Fokker has issued Service Bulletin F27/32–165, Revision 1, dated April 28, 1993, that describes procedures for inspection of the sliding member end-stop installation of the MLG to determine if parts are missing or damaged, and modification, if necessary. The RLD classified this service bulletin as mandatory and issued a Dutch airworthiness directive in order to assure the continued airworthiness of these airplanes in The Netherlands.

Additionally, Dowty Aerospace (the manufacturer of the subject MLG's) has issued Service Bulletin 32–81W, Revision 2, dated February 3, 1993, which describes detailed procedures for inspecting the MLG piston rod and adapter to confirm the correct installation of the stepped pin and dowel. It also describes procedures for periodic measuring of the extension of the MLG sliding member when the landing gear is fully extended.

Dowty Aerospace also has issued Service Bulletin 32–77W, Revision 4, dated February 3, 1993, which describes procedures for installing a modification

that would eliminate the need for periodic measuring of the extension of the MLG sliding member. This modification entails the installation of a shim between the contact face of the piston rod and adapter, and the installation of a pin in lieu of the currently installed dowel to secure the castellated nut to the adapter.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection of the MLG legs to determine proper installation of parts, and modification, if necessary. The proposed AD also would require periodic measurements (and recording) of the extension of the MLG sliding member. The proposed AD also provides for a modification of the MLG assembly as optional terminating action for the periodic measurements. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $330, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Fokker:** Docket 93-NM-85-AD

*Applicability:* Model F27 Rough Field Version (RFV) series airplanes, excluding Model F27 Mk 050 series airplanes; equipped with Dowty Aerospace main landing gear (MLG), part numbers 200563001, 200679001, 200679002, 200679003, or 200679004; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of the MLG sliding member, which could result in reduced structural integrity of the MLG, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the MLG legs to confirm the correct installation of the sliding member out-stop installation in accordance with Fokker Service Bulletin F27/32-165, Revision 1, dated April 28, 1993, and paragraph 2.C. ("Part A Procedure") of Dowty Aerospace Landing Gear Service Bulletin 32-81W, Revision 2, dated February 3, 1993. If any parts are determined to be missing or damaged, prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32-77W, Revision 4, dated February 3, 1993.

(b) Within 30 days after the effective date of this AD, measure and record the extension of the MLG sliding member when the landing gear is fully extended, in accordance with paragraph 2.D. ("Part B Procedure") of Dowty Aerospace Landing Gear Service Bulletin 32-81W, Revision 2, dated February 3, 1993.

(1) If the extension dimension exceeds 410.2 mm (16.15 inches), prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32-77W, Revision 4, dated February 3, 1993.

(2) If the extension dimension is equal to or less than 410.2 mm (16.15 inches), repeat the measurement at intervals not to exceed 500 flight cycles.

(3) If the extension dimension increases by more than 1.0 mm (0.40 inch) above the initially recorded dimension during any measurement required by this paragraph, prior to further flight, inspect the MLG in accordance with paragraph (a) of this AD.

(c) Accomplishment of the modification of the MLG in accordance with Dowty Aerospace Landing Gear Service Bulletin 32-77W, Revision 4, dated February 3, 1993, constitutes terminating action for the actions required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on July 15, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93-17260 Filed 7-20-93; 8:45 am]

BILLING CODE 4910-13-P

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**14 CFR Part 39**

**[Docket No. 93-NM-96-AD]**

## Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness

directive (AD), applicable to certain IAI, Ltd., Model 1125 Westwind Astra series airplanes, that currently requires repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. This action would shorten the interval for the required repetitive inspections and would require the installation of a terminating modification. This proposal is prompted by reports of broken outer lugs found in the horizontal stabilizer hinge splice fitting. The actions specified by the proposed AD are intended to detect cracking in the outer lugs in a timely manner in order to prevent reduced structural integrity of the horizontal stabilizer assembly.

**DATES:** Comments must be received by September 14, 1993.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-96-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2792; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-96-AD." The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-96-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

## Discussion

On May 19, 1992, the FAA issued AD 92-12-07, Amendment 39-8268 (57 FR 28603, June 26, 1992), to require visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings on all Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra series airplanes, and replacement of any cracked fittings. These inspections are required to be performed at intervals of 200 hours time-in-service. That action was originally prompted by results of a damage tolerance analysis conducted by the manufacturer, which revealed that cracks may develop in the horizontal stabilizer hinge fitting lugs. Reports were received later of cracks found around the hinge pin head and nut of the outer lugs. The requirements of that AD are intended to detect cracking in a timely manner in order to prevent reduced structural integrity of the horizontal stabilizer assembly.

Since the issuance of that AD, there have been several reports of broken outer lugs of the horizontal stabilizer hinge splice fitting, part number 453005-503. Broken lugs were found on several airplanes during the 200-hour inspection required by the existing AD. The cracks appeared on new airplanes within a very short interval, ranging from 536 to 1,013 total flight hours on the airplane. If the outer lugs fail, all of the stabilizer loads would be carried by the inner lugs, with no additional backup structure. Subsequent cracking in the inner lugs could result in the loss of integrity of the horizontal stabilizer.

IAI, Ltd., has issued Service Bulletin 1125-55-017, Revision 1, dated April 24, 1991, that describes procedures for repetitive visual inspections of the horizontal stabilizer hinge fitting, at 200-flight hour intervals, to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs; and replacement of any cracked fittings. The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, classified this service bulletin as mandatory, and issued Israeli AD No. 93-01, dated January 27, 1993, in order to assure the continued airworthiness of these airplanes in Israel. The CAAI AD mandates that the repetitive inspections be conducted at 100-flight hour intervals, rather than 200-flight hour intervals, however.

Additionally, the manufacturer has developed an improved horizontal stabilizer aft spar splice fitting, part number 453005-509, that is manufactured of titanium and not prone to the subject cracking problems. This improved fitting was installed during production on airplanes beginning with serial number 054; it also was previously installed on airplanes having serial numbers 011, 012, 022, 025, 036, 038, 039, and 043. The CAAI AD mandates that currently-installed aluminum splice fittings be replaced with the titanium splice fittings within one year.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92-12-07 to reduce the interval required for repetitive visual inspections of the outer lugs of the horizontal stabilizer hinge fittings from the currently required 200 hours time-in-service to 100 hours time-in-service. Reduction of this inspection interval will ensure the detection of the subject cracking in a more timely manner, before the cracking can reach a critical length. The inspection procedures would be required to be accomplished

in accordance with the service bulletin described previously.

Additionally, the proposed AD would require the replacement of aluminum horizontal stabilizer aft spar splice fittings with titanium splice fittings within one year after the effective date of the final rule. The replacement would be required to be accomplished in accordance with the airplane maintenance manual.

The applicability of the proposed rule would apply only to those airplanes that have not been modified with the titanium horizontal stabilizer aft spar splice fittings.

The paragraph designations of the proposed rule have been reformatted for clarity.

The FAA estimates that 36 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 200 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $20,000 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,116,000, or $31,000 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–8268 (57 FR 28603, June 26, 1992), and by adding a new airworthiness directive (AD), to read as follows:

**Israel Aircraft Industries, Ltd.:** Docket 93–NM–96–AD. Supersedes AD 92–12–07, Amendment 39–8268.

Applicability: Model 1125 Westwind Astra series airplanes on which horizontal stabilizer aft spar splice fitting, part number 453005–509, has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural integrity of the horizontal stabilizer assembly, accomplish the following:

(a) Within the next 50 hours time-in-service after July 31, 1992 (the effective date of AD 92–12–07, amendment 39–8268), unless previously accomplished within the last 150 hours time-in-service prior to July 31, 1992, perform a visual inspection of the horizontal stabilizer hinge fitting to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991.

(1) If no cracks are found during this inspection, repeat the inspection at intervals not to exceed 200 hours time-in-service until the inspection required by paragraph (b) is accomplished.

(2) If any crack is found during this inspection, prior to further flight, replace the hinge fitting in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. After replacement, repeat the visual inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the inspection required by paragraph (b) is accomplished.

(b) Within 25 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 75 hours time-in-service, perform a visual inspection of the horizontal stabilizer hinge fitting, including the horizontal stabilizer aft spar splice fitting, part number 453005–503 (aluminum), to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with the Accomplishment Instructions of IAI Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) If no crack is found during this inspection, repeat the inspection at intervals not to exceed 100 hours time-in-service.

(2) If any crack is found during this inspection, prior to further flight, replace the splice fitting, part number 453005–503 (aluminum), with an improved splice fitting, part number 453005–509 (titanium), in accordance with procedures in the IAI Model 1125 Westwind Astra maintenance manual. Such replacement constitutes terminating action for the inspection requirements of this AD.

(c) Within one year after the effective date of this AD, replace the splice fitting, part number 453005–503 (aluminum), with an improved splice fitting, part number 453005–509 (titanium), in accordance with the IAI Model 1125 Westwind Astra maintenance manual. Such replacement constitutes terminating action for the inspection requirements of this AD.

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

**Note:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on July 15, 1993.

**David G. Hmiel,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 93–17264 Filed 7–20–93; 8:45 am]

BILLING CODE 4910–13–P

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**Federal Highway Administration**

**23 CFR Parts 710, 712, 713, and 720**

**[FHWA Docket No. 93–7]**

**RIN 2125–AD09**

## Removal of Obsolete and Redundant Right-of-Way Requirements

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Intermodal Surface Transportation Efficiency Act of 1991

(ISTEA), encourages greater flexibility in establishing the degree to which FHWA will be involved in the development of Federal-aid highway projects. These amendments would permit and encourage such flexibility by eliminating a number of FHWA prior approvals that are applicable to the acquisition of real property for Federal-aid highway projects.

**DATES:** Comments must be received on or before September 20, 1993.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. 93–7, Federal Highway Administration, room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:** This NPRM would modify several provisions in the FHWA's right-of-way regulations that require the FHWA to grant prior approvals or authorizations for particular actions by a State.

During the past year the FHWA Office of Right-of-Way conducted a review of the right-of-way regulations to identify any FHWA requirements that, based on FHWA's experiences in administering the Federal-aid highway program, imposed burdens on States without any commensurate program benefit. This FHWA review identified a number of FHWA case-by-case approval actions that, based on experience, were not considered necessary to protect the investment of Federal-aid highway funds. These approval actions are divided into two categories set forth below.

The first includes six FHWA approvals or authorizations. It is proposed that the nature of the FHWA approvals required by these provisions be changed from the case-by-case prior approval required by the current regulation to a one-time FHWA approval of State procedures. Oversight by the FHWA would continue through the use of process reviews. In the future, prior approvals may be reinstituted if they are necessary to protect the Federal investment.

It is proposed that the approval or authorization actions required by the following sections be taken by the State in accordance with procedures that have been approved by the FHWA.

| Approval action | 23 CFR section |
|---|---|
| Use of fee negotiators | 710.203(e)(3). |
| Interest on right of entry payments. | 710.304(j)(5). |
| Use of fee attorneys | 712.408(a). |
| Land service facilities | 712.805(c)(1). |
| Temporary use of right-of-way. | 713.103(h)(1). |
| Appraisal fees | 720.202(d)(2). |

The second category includes four FHWA approvals that are proposed to be eliminated on all FHWA funded projects except those on the National Highway Safety (NHS). These concern the long term use or disposal of rights-of-way and are no longer considered necessary or useful on a case-by-case basis for non-NHS projects. FHWA is proposing to retain the case-by-case FHWA approvals or authorizations relating to the use or disposal of NHS rights-of-way, consistent with the provisions of 23 U.S.C. 106(b)(2) which require that a higher level of FHWA oversight be maintained on the NHS.

Accordingly, it is proposed that the approval or authorization actions required by the following sections be taken by the State in accordance with procedures that have been approved by the FHWA, except with regard to facilities or projects that are on the National Highway System (NHS), described in 23 U.S.C. 103. The FHWA approvals or authorizations that are prescribed by the following sections would continue to be required with regard to facilities or projects on the NHS because of FHWA's special interest in the integrity and safety of NHS facilities and right-of-way.

| Approval action | 23 CFR section |
|---|---|
| Non-highway use and occupancy of right-of-way. | 712.203(b)(1). |
| Airspace agreements | 713.204. |
| Disposal of right-of-way no longer needed. | 713.305. |
| Disposal of access—control and relinquishment of right-of-way. | 620.203(d) through (l). |

**Rulemaking Analyses and Notices**

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

The FHWA has determined that this document does not contain a major rule under Executive Order 12291, nor is it a significant rule under the policies and procedures of the Department of Transportation relating to regulations. The rulemaking would not affect the level of funding available in Federal or federally assisted programs covered by the Uniform Act, or otherwise have a significant economic impact, so that a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this rule on small entities and hereby certifies that this action will not have a significant economic impact on a substantial number of small entities since it will make relatively small changes in existing regulatory provisions by eliminating certain FHWA prior approvals.

*Environmental Impacts*

The FHWA also analyzed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and has determined that this action would not have any effect on the human environment.

*Executive Order 12612 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This action, in effect, both clarifies and simplifies current regulatory requirements.

*Executive Order 12372 (Intergovernmental Review)*

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

*Paperwork Reduction Act*

This proposed rule is not subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), since it does not require the collection or retention of any new data.

*Regulation Identification Number*

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

**List of Subjects**

*23 CFR Part 710*

Civil rights, Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

*23 CFR Part 712*

Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

*23 CFR Part 713*

Grant programs-transportation, Highways and roads, Property management, Real property acquisition, Rights-of-way.

*23 CFR Part 720*

Appraisal, Grant programs-transportation, Highways and roads, Real property acquisition, Rights-of-way.

In accordance with the foregoing, the FHWA proposes to amend parts 710, 712, 713 and 720 of title 23, Code of Federal Regulations, as set forth below.

## PART 710—[AMENDED]

1. The authority citation for part 710 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a) and 315; 42 U.S.C. 2000d *et seq.*, 4633, 4651–4655; 49 CFR 1.48(b) and (cc) and parts 21 and 24; 23 CFR 1.32.

**§ 710.203 [Amended]**

2. In § 710.203, paragraph (e)(3) is revised to read as follows:

**§ 710.203 General responsibilities.**

* * * * *

(e) * * *

(3) Firms and individuals meeting the SHD's qualification standards may be employed by contract for negotiating purposes in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

3. Section 710.204 is added to read as follows:

**§ 710.204 State approvals.**

Notwithstanding any other provision of this title, the FHWA authorizations or approvals prescribed by §§ 712.203(b)(1), 713.204, 713.305, and 620.203 (d) through (i) of this chapter may, except in the case of facilities or projects on the National Highway System (described in 23 U.S.C. 103), be made by the SHD in accordance with procedures that have been approved by the FHWA.

**§ 710.304 [Amended]**

4. In § 710.304, the first sentence of paragraph (j)(5) is revised to read as follows:

**§ 710.304 Reimbursement policy.**

* * * * *

(j) * * *

(5) Federal participation shall not be allowed in interest cost on payments to an owner where the SHD accepts a voluntary right of entry instead of making such payment available to the owner directly or by deposit with the court, except in cases of unusual circumstances in accordance with SHD procedures that have been approved by the FHWA. * * *

## PART 712—[AMENDED]

5. The authority citation for part 712 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a), 107, 108, 111, 114, 204, 210, 308, 315, 317 and 323; 42 U.S.C. 2000d–1, 4633, 4651–4655; 49 CFR 1.48 (b) and (cc) and part 24; 23 CFR 1.32.

6. In § 712.408, paragraph (a) is revised to read as follows:

**§ 712.408 Special counsel.**

(a) If part-time assistants or legal counsel are employed for Federal-aid right-of-way procurements, reimbursement may be claimed for the eligible cost of the services of such attorney, provided that such assistants or counsel are employed in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

7. In § 712.805, paragraph (c)(1) is revised to read as follows:

**§ 712.805 Policies.**

* * * * *

(c) *Private use and benefit.* (1) Land service facilities designed for restoration of access to and within a privately owned property shall be justified primarily on the basis of economics. In exceptional cases where the land service facility is not justified economically, but it is believed that access is nevertheless in the public interest, such access may be approved by the SHD, in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

## PART 713—[AMENDED]

8. The authority citation for part 713 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc), 18.31 and parts 21 and 24.

9. In § 713.103, paragraph (h)(1) is revised to read as follows:

**§ 713.103 Policies and procedures.**

* * * * *

(h) * * *

(1) The SHD has approved temporary right-of-way limits within the overall right-of-way in accordance with SHD procedures approved by the FHWA;

* * * * *

## PART 720—[AMENDED]

10. The authority citation for part 720 is revised to read as follows:

**Authority:** 23 U.S.C. 101(a) and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc) and part 24.

11. In § 720.202, paragraph (d)(2) is revised to read as follows:

**§ 720.202 Appraisal fees, contracts, and agreements.**

* * * * *

(d) * * *

(2) In instances in which special use or other unusual properties are involved, the SHD may approve the use of a per diem rate contracting method with a stated overall limit which should not be exceeded except by supplemental agreement, provided that such SHD approval is made in accordance with SHD procedures that have been approved by the FHWA.

* * * * *

Issued on: July 13, 1993.

**Rodney E. Slater,**

*Federal Highway Administrator.*

[FR Doc. 93–17191 Filed 7–20–93; 8:45 am]

BILLING CODE 4910–22–P

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 906

## Colorado 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 amendment.

**SUMMARY:** OSM is announcing the receipt of a proposed amendment to the Colorado permanent regulatory program (hereinafter, the "Colorado program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Colorado program concerning roads and support facilities; backfilling and grading; coal mine waste, coal processing waste, and noncoal waste disposal; mountaintop removal; and explosives. The amendment is intended to revise the Colorado program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document sets forth the times and locations that the Colorado 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 the procedures that will be followed regarding the public hearing, if one is requested.

**DATES:** Written comments must be received by 4 p.m., m.d.t. August 20, 1993. If requested, a public hearing on the proposed amendment will be held on August 16, 1993.

Requests to present oral testimony at the hearing must be received by 4 p.m., m.d.t. on August 5, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Robert H. Hagen at the address listed below.

Copies of the Colorado 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 Albuquerque Field Office.

Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, NM 87102. Telephone: (505) 766–1486

Colorado Division of Minerals and Geology, Department of Natural Resources, 215 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203. Telephone: (303) 866–3567

**FOR FURTHER INFORMATION CONTACT:** Robert H. Hagen, Telephone: (505) 766–1486.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (46 FR 5899). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

## II. Proposed Amendment

By letter dated June 30, 1993, Colorado submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. CO–552). Colorado submitted the proposed amendment in part at its own initiative and in part in response certain issues identified in letters dated May 7, 1986, and March 22, 1990 (Administrative Record Nos. CO–282 and CO–496), that OSM sent to Colorado in accordance with 30 CFR 732.17(c).

The provisions of 2 Code of Colorado Regulations 407–2, the rules and regulations of the Colorado Mined Land Reclamation Board that Colorado proposes to amend are the: Definitions for "road," "haul road," "access road" and "light use road" at Rules 1.04(111) (a) through (c); permit application requirements for support facilities, stream fords used as temporary construction routes, and certification of plans and drawings for haul and access roads at Rules 2.05.3(3)(a) and (c)(vi) and (vii); reclamation plan requirements for all roads at Rule 2.05.4(2); permit application requirements for haul roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.1(1)(a), (b), (d), and (e), 4.03.1(2)(b), 4.03.1(3)(c) and (e)(ix), 4.03.1(6)(c), 4.03.1(7)(b) and (b)(ix); permit application requirements for access roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.2(1)(a), (b), (e), and (f), 4.03.2(2)(b), 4.03.2(3)(c), and (e)(ix), 4.03.2(6) (a) and (c), and 4.03.2(7)(b), and (b)(ix); permit application requirements for light-use roads concerning general requirements, location, design and construction, maintenance, and reclamation at Rules 4.03.3(1) (a) and (b), 4.03.3(2)(b), 4.03.3(3)(c), 4.03.3(6)(c), and 4.03.3(7)(i); performance standards for coal exploration in regard to roads at Rules 4.21.4(3)(b) (i) through (iii), 4.21.4(3)(c) (i) through (iii), and 4.21.4(3)(d) (i) and (ii); permit application requirements for the return of coal mine waste and coal processing waste to abandoned workings at Rules 2.05.3(9)(a) and 2.05.3(1) (a) through (e); performance standards for disposal of spoil in head of hollow fills and disposal of noncoal waste at Rules 4.09.3(2)(c) and 4.11.4(3); general backfilling and grading requirements for cut-and-fill terraces at Rules 4.14.2(2) and (2)(c); performance standards for mountaintop removal operations at Rules 4.26.2(2) and (2) (a) through (c); and performance standards for the use of explosives at Rules 4.08.4(10) and (10) (a) through (c), and 4.08.6(1).

In addition to the above revisions, Colorado's amendment also contains a Statement of Basis, Specific Statutory Authority, and Purpose. This statement provides Colorado's rationale for submitting the revisions proposed in the amendment. In particular, Colorado included a policy statement explaining what it would consider, on a case-by-case basis, in making a determination of the program's jurisdiction over public roads. These considerations include whether the road is constructed or improved by an operator, mining related use, and degree of mining related impacts to the road.

## III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Colorado program.

### *Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque 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. on August 5, 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 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 testify 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 by contacting the person 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**

*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 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

*Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that 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 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(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 other requirements of 30 CFR parts 730, 731 and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(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)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*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 submittal 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. Accordingly, 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.

**List of Subjects in 30 CFR Part 906**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 1993.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

[FR Doc. 93–17297 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–05–M

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**30 CFR Part 915**

**Iowa Permanent Regulatory Program**

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

**ACTION:** Proposed rule; reopening and extension of public comment period on proposed amendment.

**SUMMARY:** OSM is reopening the public comment period and announcing the receipt of revisions to a previously proposed amendment to the Iowa permanent regulatory program (hereinafter, the "Iowa program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revised amendment proposes further changes of the Iowa regulations pertaining to permanent regulatory program, exemption for coal extraction incidental to the extraction of other minerals, restriction of financial interests of State employees, exemption for coal extraction incident to government-financed highway or other construction, protection of employees, initial regulatory program, areas unsuitable, permits for operations and exploration, small operator assistance, bonding and insurance, permanent program performance standards, inspection and enforcement, blaster certification, and contested cases and public hearings. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Iowa program and proposed amendment to that program are available for public inspection and the reopened comment period during which interested persons may submit written comments on the proposed amendment.

**DATES:** Written comments must be received by 4 p.m., c.d.t. August 5, 1993.

**ADDRESSES:** Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Iowa 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 Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, Room 500, Kansas City, MO 64105; Telephone: (816) 374–6405.

Department of Agriculture and Land Stewardship, Division of Soil Conservation, Wallace State Office Building, East 9th and Grand Streets,

Des Moines, Iowa 50319; Telephone: (515) 281–6147.

**FOR FURTHER INFORMATION CONTACT:** Jerry R. Ennis, Telephone: (816) 374–6405.

**SUPPLEMENTARY INFORMATION:**

**I. Background on the Iowa Program**

On January 21, 1981, the Secretary of the Interior conditionally approved the Iowa program. General background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Iowa program can be found in the January 21, 1981, **Federal Register** (46 FR 5885). Subsequent actions concerning Iowa's program and program amendments can be found at 30 CFR 915.15 and 915.16.

**II. Discussion of Proposed Amendment**

From October 1, 1983, to December 20, 1989, a number of changes were made to Federal regulations concerning surface coal mining and reclamation operations. During this time period, pursuant to Federal regulations at 30 CFR 732.17, OSM notified Iowa in four separate 732 letters, listed below, that the State rules must be amended to be consistent with the revised Federal regulations.

1. Regulatory Reform Review II, December 12, 1988, Administrative Record Number, IA–336.
2. Ownership and Control, May 11, 1989, Administrative Record Number, IA–340.
3. Regulatory Reform Review III, November 28, 1989, Administrative Record Number, IA–347.
4. Incidental Coal Extraction, February 7, 1990, Administrative Record Number, IA–349.

By letter dated November 23, 1992 (Administrative Record No. IA–372), Iowa submitted a proposed amendment to its program pursuant to SMCRA. Iowa submitted the proposed amendment with the intent of satisfying the outstanding 732 letters from OSM and the required program amendments at 30 CFR 915.16(a) (56 FR 56578).

OSM announced receipt of the proposed amendment in the January 14, 1993, **Federal Register** (58 FR 4376) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 16, 1993. The public hearing scheduled for February 8, 1993, was not held because no one requested an opportunity to testify.

By letter dated May 10, 1993 (Administrative Record No. IA–381), OSM identified 14 deficiencies and 11 editorial comments concerning the November 23, 1992, amendment submission. By letter dated July 8, 1993 (Administrative Record No. IA–383), Iowa submitted a revised amendment. This new amendment submission contains further revisions that are discussed briefly below:

*(1) Reference to Iowa Statute*

The Division's coal regulatory statute, Iowa Code chapter 83 has been changed to Iowa Code chapter 207.

*(2) IAC 27–40.1(3) Professional Land Surveyor*

Iowa deletes the authorization for land surveyors to certify maps and plans.

*(3) IAC 27–40.1(3) Petition for Rulemaking*

Iowa proposes to revise its program by adopting the Iowa rules at 21 IAC chapter 3 and the Iowa Uniform rules of Agency Procedure to address petitions received from related entities.

*(4) IAC 27–40.3(83) General*

Iowa proposes to restore the incorporation by reference of 30 CFR 700.13 notice of citizen suits.

*(5) IAC 27–40.4(10) Full Water Year*

Iowa clarifies its use of the term "full water year" to define what will be accepted as a minimum measure of Iowa's seasonal, climatic variation for quality and quantity in gathering pre-mining groundwater and surface water data as required at 30 CFR 780.21(b) (1) and (2).

*(6) IAC 27–40.21(5) Procedures*

Iowa proposes to adopt the requirement at 30 CFR 761.12(c) that where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under 30 CFR 761.11(B), the applicant shall submit a permit application to the Director for processing under subchapter D of this chapter. Before acting on the permit application, the Director shall ensure that the Secretary's determination has been received and the findings required by section 522(e)(2) of the Act have been made.

*(7) IAC 27–40.31(9) General Word Substitution*

Iowa proposes to remove the general word substitution for "the Act" for this rule.

*(8) IAC 27–40.32(1)(b)(2)(i) Definitions*

Iowa clarifies that incidental boundary revisions are treated as permit revisions.

*(9) IAC 27–40.34(3) General Word Substitution*

Iowa removes the general word substitution for "the Act" at this rule.

*(10) IAC 27–40.39(1) Permits Incorporating Variances From Approximate Original Contour (AOC) Restoration Requirements for Steep Slope Mining*

Iowa proposes to adopt the regulations at 30 CFR 785.15 concerning steep slope mining.

*(11) IAC 27–40.61 (2) and (3) Responsibility*

Iowa proposes to delete 30 CFR 810.4 (b) and (c) and substitute in lieu thereof that (b) the Division shall ensure that performance standards and design requirements are implemented and enforced under the Iowa program and (c) each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with the performance standards and design requirements of the approved Iowa program.

*(12) IAC 27–40.63 Backfilling and Grading: Thick and Thin Overburden*

Iowa proposes to adopt 30 CFR 816.104 and 816.105 concerning thick and thin overburden.

*(13) IAC 27–40.63(12) Disposal of Noncoal Mine Wastes*

Iowa proposes to delete the requirements of 30 CFR 816.89 and replace them with the following requirements: Noncoal mine wastes including, but not limited to grease garbage, abandoned mining machinery, lumber, and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a landfill permitted by the Iowa Department of Natural Resources pursuant to 561 Iowa Administrative Code Chapters 101, 102, and 103. Lubricants, paints, and flammable liquids may not be buried in the State of Iowa but, along with any other toxic waste, must be disposed of in the legally prescribed manner. Iowa law prohibits final disposal of noncoal mine wastes within the permit area. Pending final disposal at a permitted DNR facility, noncoal mine waste shall be placed and stored in a controlled manner in a designated portion of the permit area so as to ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented and that

the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings. Noncoal mine waste shall at no time be deposited in a refuse pile or impounding structure. No excavation for or storage of noncoal mine waste shall be located within 8 feet of any coal outcrop or coal storage area. Final disposal of noncoal mine wastes shall be in a designated, State-approved solid waste disposal site permitted by the Iowa Department of Natural Resources pursuant to 561 Iowa Administrative Code Chapters 101, 102, and 103. Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amended) and 40 CFR part 261 shall be handled in accordance with the requirements of subtitle C of RCRA and any implementing regulations.

*(14) IAC 27–40.67(3) Proximity*

Iowa proposes to clarify that proximity shall not be the decisive factor in deciding to regulate an offsite processing plant.

*(15) IAC 27–40.68(83) Special Permanent Program Performance Standards-In Situ Processing*

Iowa proposed to delete the incorporation by reference of 30 CFR part 828.

*(16) IAC 27–40.74(5) Procedures for Assessment Conference*

Iowa proposes to clarify this provision with several word changes and rule citations.

*(17) IAC 27–40.74(6) Request for a Hearing*

Iowa proposes to delete the request for hearing requirements at 30 CFR 845.19 and replace them with similar requirements that include State specific language and citations. In addition a copy of Division III, Iowa Rules of Civil Procedures are incorporated into the Iowa program for clarification.

The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors.

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Iowa program.

*Written Comments*

Written comments should be specific, pertain only to the issue proposed in this 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 Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the Administrative record.

**List of Subjects in 30 CFR Part 915**

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 14, 1993.

**Raymond L. Lowrie,**

*Assistant Director, Western Support Center.*

[FR Doc. 93–17298 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–05–M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 130, 131, 132, and 137

[CGD 91–005]

RIN 2115–AD–76

### Preliminary Regulatory Impact Analysis for Financial Responsibility for Water Pollution (Vessels)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard has prepared a Preliminary Regulatory Impact Analysis (RIA) which addresses the possible impacts on vessel owners and operators, as well as consequential impacts on the economy, of proposed financial responsibility regulations to implement section 1016 of the Oil Pollution Act of 1990 (OPA 90) and section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Coast Guard solicits comments on the Preliminary RIA.

**DATES:** Comments must be received on or before September 20, 1993.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD–91–005), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–6740. Comments may be faxed to the Executive Secretary at (202) 267–4163. The Executive Secretary maintains the public docket. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

Copies of the Preliminary RIA are also available for inspection at the above address, or may be obtained by contacting Mr. Ernest L. Worden at (703) 235–4793.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ernest L. Worden, Economist, National Pollution Funds Center, (703) 235–4793.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to submit written comments on the RIA, with supporting data. Persons submitting comments should submit their name and address, identify the docket (CGD 91–005) and the specific section of the RIA to which each comment applies. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

**Background and Discussion**

On September 26, 1991, the Coast Guard published a Notice of Proposed Rulemaking (56 FR 49006) to implement the financial responsibility requirements of section 1016 for OPA 90 (33 U.S.C. 2716) and section 108 of CERCLA (42 U.S.C. 9608). The NPRM listed three methods for vessels to demonstrate guaranteed financial responsibility under OPA 90 and CERCLA: Insurance, surety bond, and financial guaranty. Self-insurance was also listed. The Coast Guard solicited comments on how letters of credit could be used as evidence of financial responsibility.

In the preamble to the NPRM the Coast Guard noted that because of the public interest in the rulemaking, and the controversy over the possibility that oceangoing vessel operators might encounter difficulty in obtaining statutorily required guaranties of insurance if the proposed rule went into effect, a RIA would be prepared on the proposed rule. To assist preparing the RIA, the Coast Guard solicited comments, on sixteen questions, from industries that may be affected by the NPRM, as well as from the public. In addition, the Coast Guard also requested comments on other possible scenarios of industry reaction to the proposed financial responsibility regulations.

About 25 commenters addressed the bulk of the questions in detail. These comments as well as others submitted to the docket were evaluated and considered in preparing the Preliminary RIA.

**Summary of Preliminary RIA**

OPA 90 generally requires that any vessel over 300 gross tons operating in United States waters, and a vessel of any size using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States, shall establish and maintain, in accordance with regulations promulgated by the Secretary of Transportation, evidence of financial responsibility sufficient to meet the maximum amount of liability specified under section 1004(a) of OPA 90. The Secretary of Transportation delegated this rulemaking authority to the Commandant of the Coast Guard.

This Preliminary RIA considers four options: (1) Retain the existing rules; (2) adopt the NPRM; (3) amend the NPRM to accept entry in a Protection and Indemnity Club (P&I Club) as an asset for self-insurance; and (4) amend the NPRM's self-insurance formulae (i.e., eliminate the working capital requirement and/or the requirement to maintain assets in the United States by allowing worldwide assets to be measured against worldwide liabilities). Consideration of each alternative has been suggested either by the Coast Guard or a number of commenters. Executive Order 12291 envisages evaluation of a range of alternatives, even those that may not be authorized under existing legislation. The options listed above are the major ones most frequently mentioned. The discussion of these four options in the Preliminary RIA does not preclude consideration of other options that might develop before promulgation of final rules to implement the financial responsibility requirements of OPA 90. A final RIA will be prepared in connection with a final rule.

The four options in the Preliminary RIA were analyzed for their potential economic impacts, including an evaluation of the extent of support of OPA 90's philosophy that the polluter should pay for removal costs and damages associated with an oil spill. Without assurances that vessel owners and operators have financial resources to pay for the increased financial liability for oil spills, the Oil Spill Liability Trust Fund (OSLTF) has an increased exposure to pay for the consequences of oil spills.

Continuation of the existing financial responsibility rules, with their lower guarantied levels of coverage, would increase the probability that the United States taxpayer would pay for removal costs and damages of an oil spill through the OSLTF. In addition, OPA 90 requires that vessel owners and operators must demonstrate substantially greater financial responsibility than under preexisting laws in order to operate in United States waters. Retaining the existing rules would not ensure financial responsibility for the higher limits under OPA 90's more comprehensive liability regime.

Adoption of the NPRM would promote Congressional intent that the polluter pays. However, the P&I Clubs, mutual associations of shipowners and operators, have stated that they will not provide the evidence of financial responsibility that would make them guarantors under OPA 90. Vessel owners and operators solely dependent upon the P&I Clubs for evidence of financial responsibility would not be able to obtain Certificates of Financial Responsibility (COFR) from the Coast Guard. (A COFR is the document issued by the Coast Guard that enables a vessel operating in the United States to show that it has adequate financial responsibility.) The P&I Clubs have been, and remain, the traditional means by which most oceangoing vessel owners and operators have met, and meet, the financial responsibility requirements and obtained COFRs under pre-OPA 90 statutes. Consequently, the RIA discusses the possible economic repercussions should the NRPM be promulgated unamended, and the P&I Clubs subsequently refuse to provide guaranties necessary for vessel owners and operators to obtain COFRs from the Coast Guard. The RIA also examines the economic implications of the worst-case scenario, which assumes that the P&I clubs will not issue financial responsibility guaranties under the NPRM, that most vessel owners and operators are unable or unwilling to use the self-insurance, financial guaranty or surety bond methods to meet the financial responsibility requirements, and that no other methods are available.

Amending the NPRM in order to accept membership in a P&I Club as a $500 million asset, and thus permit the vessel owner and operator to self-insure, has been a proposal frequently mentioned by vessel owners and operators as well as their P&I Clubs. The face value of insurance is not considered an asset under generally accepted or other known accounting principles. In addition, the Coast Guard would not be assured that the P&I Clubs would provide the money needed to pay for the removal costs and damages of an oil spill, since the Clubs could invoke policy defenses. For example, as indemnity insurance, bankruptcy of the insured would be a defense to any payment. That is, before a P&I Club can indemnify a member vessel owner or operator, the member must first pay removal costs and damages from its own resources. Thus, when the owner and operator are bankrupt, if the P&I Club does not, or because of its rules cannot, elect to reimburse the damaged parties directly, the burden then would fall upon the tax payer funded OSLTF.

The fourth option, modification of the proposed self-insurance requirements, might allow some large, foreign-based corporations to self-insure if they chose to do so. (Without United States government access to the financial statements of foreign companies, it is not possible to determine the number of firms that could qualify under a modified self-insurance formula.) However, any modification of the self-insurance requirements would still preclude the majority of United States and foreign independent tank vessel owners and operators from using this method. A substantial volume of oil is shipped by independent foreign owners and operators. This option places a reliance on the availability of foreign-based assets to satisfy removal costs and damages claims, but there are difficulties inherent in attaching foreign-based assets.

Dated: July 15, 1993.

**J.W. Kime,**

*Admiral, U.S. Coast Guard, Commandant.*

[FR Doc. 93–17262 Filed 7–19–93; 8:45 am]

BILLING CODE 4910–14–M

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**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 10**

**[Docket No. 930366–3066]**

**RIN 0651–AA65**

## Cross-Appeals in Patent and Trademark Office Disciplinary Proceedings

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Patent and Trademark Office (PTO) proposes to amend its rules of practice in practitioner disciplinary proceedings. The proposed rule change provides for a time period for a party to a disciplinary proceeding to file a cross-

appeal, after the other party (the respondent or the Director of the Office of Enrollment and Discipline) to the proceeding has appealed from an initial decision of the administrative law judge to the Commissioner. Currently, PTO rules do not provide for a time period for filing a cross-appeal in a disciplinary case. A party in a disciplinary case may be interested in appealing only if the other party has appealed. Allowing a time period for filing a cross-appeal will give parties to disciplinary cases more flexibility after an initial decision by the administrative law judge. A party need not file a contingent appeal simply to preserve rights in the event the other party files an appeal.

**DATES:** Written comments must be received on or before August 20, 1993 to ensure consideration. An oral hearing will not be conducted.

**ADDRESSES:** Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231, marked to the attention of Fred E. McKelvey, Solicitor. Written comments will be available for public inspection in suite 918, on the 9th floor of Crystal Park II, located at 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Fred E. McKelvey by telephone at (703) 305–9035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** Pursuant to 37 CFR 10.132 *et seq.*, the Director of the Office of Enrollment and Discipline within the PTO may initiate a disciplinary proceeding against a practitioner. If the proceeding is contested by the practitioner and the Director continues to prosecute, an administrative law judge for the Department of Commerce enters an initial decision which includes findings of fact, conclusions of law and an order. 37 CFR 10.154.

Either party to the proceeding may appeal from the initial decision of the administrative law judge to the Commissioner within thirty (30) days of the date of the decision. 37 CFR 10.155(a). However, § 10.155(a) does not currently address the filing of a cross-appeal. That is, no period of time is specified for the non-appealing party to file a cross-appeal.

With regard to interference proceedings, 37 CFR 1.304(a) addresses the filing of cross-appeals by stating in pertinent part that:

> The time for filing a cross-appeal [to the Court of Appeals for the Federal Circuit] or cross-action [in a district court] expires (1) 14 days after service of the notice of appeal or the summons and complaint or (2) two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

The proposed rule change is similar to the cross-appeal authorized in interference proceedings.

### Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), Executive Orders 12291 and 12612 and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The principal impact of the proposed change is to provide a time period to file a cross-appeal in a PTO disciplinary proceeding.

The PTO has determined that the proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers; individuals; industries; Federal, state or local government agencies; or geographic regions. There will be no significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The proposed rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

### List of Subjects in 37 CFR Part 10

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, and pursuant to the authority contained in 35 U.S.C. 6, the PTO proposes to amend 37 CFR part 10 as follows, wherein deletions are indicated by brackets ([ ]) and additions by arrows (→ ←):

## PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

1. The authority citation for 37 CFR part 10 would continue to read as follows:

**Authority:** 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 6, 31, 32, 41.

2. Section 10.155 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 10.155 Appeal to the Commissioner.**

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. →If an appeal is taken, the time for filing a cross-appeal expires (1) 14 days after service of the appeal or (2) 30 days after the date of the initial decision of the administrative law judge, whichever is later.← An appeal →or cross-appeal← by the respondent will be filed with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal →or cross-appeal←, the Director shall serve a copy of the appeal →or cross-appeal←. Within thirty (30) days after receipt of an appeal →, cross-appeal← or copy thereof, the other party may file a reply brief, in duplicate with the Director. If the Director files the reply brief, the Director shall serve a copy of the reply brief. Upon the filing of an appeal →, cross-appeal, if any,← and [a] reply brief→s←, if any, the Director shall transmit the entire record to the Commissioner.

* * * * *

Dated: July 15, 1993.

**Michael K. Kirk,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 93–17268 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–16–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### 42 CFR Part 51a

**RIN 0905–AD88**

### Maternal and Child Health Project Grants

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would amend existing regulations governing the Maternal and Child Health (MCH) Federal Set-Aside programs under section 502(a) and 502(b) of title V of the Social Security Act.

This proposed rule would revise the regulations to: Increase flexibility to accommodate changing policy concerns; implement requirements established under the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) which address collection of data from funded projects, and make other changes which are technical or clarifying in nature. This proposed rule will bring the existing regulations up to date with current Department policy and statutory amendments made to sections 501(a), 502(a), 502(b), and 506(a)(3).

**DATES:** Comments must be submitted on or before September 20, 1993.

**ADDRESSES:** All comments concerning this proposed regulation should be addressed to: Lynn Squire, Legislative Officer, Maternal and Child Health Bureau, HRSA, HHS, Office of Program Development, Parklawn Building, room 18–20, 5600 Fishers Lane, Rockville, MD 20857. Comments received timely will be available for public inspection at the above address Monday through Friday 8:30 a.m. to 5 p.m. as they are received.

**FOR FURTHER INFORMATION CONTACT:** Lynn Squire, Legislative Officer, at (301) 443–2778.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. General*

The MCH Federal Set-Aside programs are governed by sections 502(a) and 502(b) of the Social Security Act (the Act) (42 U.S.C. 702(a) and 702(b)), as amended by the OBRA 89. This notice or proposed rulemaking (NPRM) incorporates statutory changes to the Act and accommodates policy changes within the Public Health Service affecting MCH Federal Set-Aside programs since publication of implementing regulations at 51 FR 7726, March 5, 1986. Section 502(b)(1)(A) of the Social Security Act, as amended by OBRA 89, directs that 12.75 percent of amounts appropriated for the Maternal and Child Health Services Block Grant in excess of $600 million be set aside by the Secretary of Health and Human Service (HHS) for special projects, termed Community Integrated Service Systems (CISS) projects, identified under section 501(a)(3) of the Act for the development and expansion of: Maternal and infant home visiting programs; programs to increase the numbers of obstetricians and pediatricians participating in titles V and XIX; integrated MCH service delivery systems; MCH centers operating under not-for-profit hospitals; rural MCH projects; and outpatient and community based services for children with special health care needs. CISS projects are conducted in areas of high infant mortality in coordination with and in complement to the State's MCH Services Block Grant Plan. Assurance of non-federal matching funds at least equal to the amount provided under the project grant is required for CISS projects involving the development and/or expansion of an MCH center under the direction of a not-for-profit hospital.

Of the remainder of the total amount appropriated, 15 percent of the funds are to be set aside by the Secretary to provide (through grants, contracts, or otherwise) for awards authorized under section 502(a): Special projects of regional and national significance; research and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development); genetic disease testing, counseling, and information development and dissemination programs; grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age; and screening of newborns for sickle cell anemia and other genetic disorders, and follow-up services.

The federal set-aside for Special Projects of Regional and National Significance (SPRANS) was established by the Omnibus Budget Reconciliation Act of 1981 (OBRA 81) (Pub. L. 97–35).

### *B. Legislative/Policy Changes*

(1) The legislative changes to title V that are incorporated in this update include the following:

(a) Section 9527 of the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) (Pub. L. 99–272) substituted the term "Children with Special Health Care Needs" for "Crippled Children".

(b) OBRA 89:

(i) Subsection (b) of section 6502(a)(3) established the 12.75 percent set-aside for the CISS program under section 502(b);

(ii) Subsection (a) of section 6501(a)(1) incorporated applicable objectives established by the Secretary under the Public Health Service Act for the year 2000 into section 501;

(iii) Section 6504(b) established new reporting requirements under section 506(a)(3) on numbers of people trained and/or served.

(2) Policy changes affecting title V include the following:

(a) Focus on Healthy People 2000/Healthy Children 2000 objectives;

(b) Focus on culturally distinct populations;

(c) Focus on appropriate coordination with primary care and public health activities.

(3) Obsolete HHS regulations in 42 CFR 51a.7 that are no longer applicable:

(a) 42 CFR Part 122, Health Systems Agencies, Subpart E: Health System agency reviews of certain proposed uses of federal health funds;

(b) 45 CFR Part 19, Limitations on payment or reimbursement for drugs;

(4) Erroneous reference (45 CFR Part 50, Policies of general applicability, Subpart D, is corrected to read as follows: 42 CFR Part 50, Subpart D, Public Health Service grant appeals procedure).

### *C. Analysis of Amendments*

Following is a summary of major items in the proposed regulations. In all sections of the regulations, references to "crippled children" are replaced with "children with special health care needs".

Section 51a.1 To whom does this regulation apply?

The wording of the title of this section is changed to refer to "programs." This change reflects more accurately the intent of the section. The content of the section is expanded to include the CISS program, which was authorized under section 502(b)(1)(A) of the Act by OBRA 89.

Section 51a.3 Who is eligible to apply for Federal Funding?

This section is amended to clarify and more clearly distinguish between eligibility requirements for applicants for research, training, and other grant categories under the Federal Maternal and Child Health Set-Aside program.

Section 51a.4 How is application made for Federal funding?

Wording changes are made in this section to better describe the application process common to all project categories and to delete nonstatutory distinctions among project categories in existing requirements.

Section 51a.5 What criteria will DHHS use to decide which projects to fund?

This section is amended to incorporate into the Secretary's funding decisions consideration of MCH-related Healthy People 2000 objectives, as required under section 501(a) of the Act by OBRA 89. It also incorporates a statutory funding preference for certain

CISS project strategies in areas of high infant mortality, as required under section 502(b)(2) of the Act by OBRA 89. In addition, to better reflect the diversity of project categories for which applications are currently solicited and their responsiveness to changing needs, obsolete and overly-rigid evaluation criteria in the section are replaced. The new criteria would be consistent with Part 116 of the Public Health Service (PHS) Grants Administration Manual, applicable to decisions on funding awards, while increasing opportunities for the MCHB to develop criteria as needed for specific project categories. Category-specific evaluation criteria will be published in program announcements and/or application guidance. This provision allows MCHB to adapt and respond to unique project requirements or overarching agency and PHS objectives.

51.a7 What other DHHS regulations apply?

Several amendments are made to this section. Errors in reference to 42 CFR part 50, subpart D and in the title of 45 CFR part 75 are corrected. References to both 42 CFR part 122 and 45 CFR part 19 are deleted as obsolete.

51a.8 What other conditions apply to these grants?

This section is added to reflect additional conditions which grantees must meet. Requirements in paragraph (a) implement amendments to section 506(a)(3) of the Act made by OBRA 89, which address evaluations performed and collection of data from funded projects regarding the number of individuals served or trained, as appropriate. Paragraph (a) also provides for grantee reporting based on an OBRA 89 amendment to section 501(a) of the Act which requires that title V activities address PHS Healthy People 2000 objectives. Clearance of this data collection by the Office of Management and Budget (OMB) is needed under the Paperwork Reduction Act of 1980. Paragraph (b) of this section adds a provision giving the Secretary discretion to impose such additional conditions on grantees as he or she views as necessary. This clause appears in many PHS grant guidances and is intended to increase the grantor agency's ability to respond to changing administrative and programmatic priorities or initiatives.

## II. Regulatory Flexibility Act and Executive Order 12291

The proposed rule will implement new requirements established under OBRA 89 which address data collection from funded projects. The Department believes that the resources required to implement the new requirements in this proposed rule are minimal. In accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The Department also has determined that this proposed rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

## III. Paperwork Reduction Act

This proposed rule contains information collections which must be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Proposed § 51a.8 requires grantees to collect information concerning the number of individuals served or trained under MCH Federal Set-Aside program grant projects, evaluations performed, and how each project relates to relevant PHS Healthy People 2000 objectives. This collection is necessary to satisfy requirements under section 506(a)(3) added by section 6504(b) of OBRA 89 for inclusion of project impact information in the annual title V report to Congress and requirements added under section 501(a) for addressing PHS Healthy People 2000 objectives. The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting, notification and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Title:* SPRANS/CISS Uniform Data Collection Instrument.

*Description:* Information will be collected from funded projects to enable the Secretary to respond to congressional reporting mandates required by OBRA 89 concerning individuals served or trained by projects, their responsiveness to Healthy Children 2000 objectives, and their evaluation status.

*Description of Respondents:* Recipients of SPRANS and CISS project awards.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

| Section | Number of respondents | Responses per respondent | Hours per response | Total hours |
|---|---|---|---|---|
| Reporting: | | | | |
| § 51a.8 | 580 | 1 | 4 | 2,320 |
| Total Burden | | | | 2,320 |

The Department has submitted a copy of this proposed rule to OMB for its review of the reporting and recordkeeping requirements. Organizations and individuals desiring to submit comments on these information requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, Attention: Allison Herron Eydt, HRSA Desk Officer, New Executive Office Building, room 3001, Washington, DC 20503.

## IV. List of Subjects in 42 CFR Part 51a

Grant programs-health, Handicapped, Health care, Health professions, Maternal and child health.

Dated: March 5, 1993.

**Audrey F. Manley,**

*Acting Assistant Secretary for Health.*

Approved: June 15, 1993.

**Donna E. Shalala,**

*Secretary.*

For the reasons set out in the preamble, the Secretary proposes to amend 42 CFR part 51a as follows:

## PART 51a—PROJECT GRANTS FOR MATERNAL AND CHILD HEALTH

1 and 2. The authority citation for part 51a is revised to read as follows:

Authority: Sec. 1102 of the Social Security Act, 49 Stat. 647 (42 U.S.C. 1302); sec. 502(a), 502(b)(1)(A), and 506(a)(3) of the Social Security Act, 95 Stat. 819–20 (42 U.S.C. 702(a), 702(b)(1)(A) and 706(a)(3)).

3. Section 51a.1 is revised to read as follows:

### § 51a.1 To which programs does this regulation apply?

The regulation in this part applies to grants, contracts, and other arrangements under section 502(a) and 502(b)(1)(A) of the Social Security Act, as amended (42 U.S.C. 702(a) and 702(b)(1)(A)), the Maternal and Child Health (MCH) Federal Set-Aside project grant programs. Section 502(a) authorizes funding for special projects of regional and national significance (SPRANS), research and training projects with respect to maternal and child health and children with special health care needs (including early intervention training and services development); genetic disease testing, counseling and information programs; comprehensive hemophilia diagnostic and treatment centers; projects for screening and follow-up of newborns for sickle cell anemia and other genetic disorders; and special maternal and child health improvement projects. Section 502(b)(1)(A) authorizes funding for projects termed community integrated service system (CISS) projects for the development and expansion of: Maternal and infant health home visiting; projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs; integrated maternal and child health service systems; maternal and child health centers operating under the direction of not-for-profit hospitals; rural maternal and child health programs; and outpatient and community-based services programs for children with special health care needs.

4. Section 51a.3 is revised to read as follows:

### § 51a.3 Who is eligible to apply for Federal funding?

(a) With the exception of training and research, as described in paragraph (b) of this section, any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for federal funding under this part.

(b) Only public or nonprofit private institutions of higher learning may apply for training grants. Only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants, contracts or cooperative agreements for research in maternal and child health services or in services for children with special health care needs.

5. Section 51a.4 is revised to read as follows:

### § 51a.4 How is application made for Federal funding?

(a) An application for funding under the MCH Federal Set-Aside project grant programs must be submitted to the Secretary at such time and in such manner as the Secretary may prescribe.

(b) The application must include a budget and narrative plan of the manner in which the project will meet each of the requirements prescribed by the Secretary. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project.

(Approved by the Office of Management and Budget under control number 0915–0050)

6. Section 51a.5 is revised to read as follows:

### § 51a.5 What criteria will DHHS use to decide which projects to fund?

(a) The Secretary will determine the allocation of funds available under sections 502(a) and 502(b)(1)(A) of the Act for each of the activities described in § 51a.1.

(b) Within the limit of funds determined by the Secretary to be available for each of the activities described in § 51a.1, the Secretary may award Federal funding for projects under this part to applicants which will, in his or her judgment, best promote the purpose of title V of the Social Security Act and address achievement of *Healthy Children 2000* objectives,[1] taking the following factors into account:

(1) The extent to which the project will contribute to the advancement of maternal and child health and/or improvement of the health of children with special health care needs;

(2) The extent to which the project is responsive to policy concerns applicable to MCH grants and to program objectives, requirements, priorities and/or review criteria for specific project categories, as published in program announcements or guidance materials.

(3) The extent to which the estimated cost to the Government of the project is reasonable, considering the anticipated results;

(4) The extent to which the project personnel are well qualified by training and/or experience for their roles in the project and the applicant organization has adequate facilities and personnel; and

(5) The extent to which, insofar as practicable, the proposed activities, if well executed, are capable of attaining project objectives.

(c) For CISS projects utilizing any of the following strategies, preference for funding will be given to qualified applicants in areas with a high infant mortality rate (relative to the latest average infant mortality rate in the United States or in the State in which the area is located):

(1) Projects for the development and expansion of maternal and infant health home visiting;

(2) Projects to increase the participation of obstetricians and pediatricians in title V and title XIX programs;

(3) Integrated maternal and child health service systems; maternal and child health centers operating under the direction of not-for-profit hospitals;

(4) Maternal and child health centers operating under the direction of not-for-profit hospitals; and

(5) Rural maternal and child health programs.

7. Section 51a.7 is revised to read as follows:

### § 51a.7 What other DHHS regulations apply?

(a) Several other DHHS regulations apply to awards under this part. These include, but are not limited to:

42 CFR part 50—Policies of general applicability:

Subpart B—Sterilization of persons in federally assisted family planning projects.

Subpart C—Abortions and related medical services in federally assisted programs of the Public Health Service.

Subpart E—Maximum allowable cost for drugs.

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

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[1] Health Children 2000: National Health Promotion and Disease Prevention Objectives Related to Mothers, Infants, Children, Adolescents, and Youth is a special compendium of health status goals and national health objectives affecting mothers, infants, children, adolescents, and youth originally published in Healthy People 2000 in September 1990. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0 or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone (202) 783–3238).

45 CFR part 81—Practice and procedure for hearings under part 80 of this title.

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance.

(b) In addition to the above regulations, the following apply to projects funded through grants:

42 CFR part 50—Policies of general applicability:

Subpart D—Public Health Service grant appeals procedure.

45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR part 74—Administration of grants to nonprofit organizations.

45 CFR part 75—Informal grant appeals procedures.

45 CFR part 92—Administration of grants to State and local governments.

8. Section 51a.8 is added to read as follows:

**§ 51a.8 What other conditions apply to these grants?**

(a) Recipients of project grants will be required to submit such additional information to the Secretary on an annual basis as the Secretary determines, including:

(1) The number of individuals served or trained, as appropriate under the project;

(2) A copy of any evaluation conducted by the recipient; and

(3) A list of Healthy Children 2000 objectives addressed by the project and data on how the project contributed toward meeting the objectives.

(b) The Secretary may at the time of award of project grants under this part impose additional conditions, including conditions governing the use of information or consent forms, when, in the Secretary's judgment, they are necessary to advance the approved program, the interest of public health, or the conservation of grant funds.

[FR Doc. 93-17053 Filed 7-20-93; 8:45 am]

BILLING CODE 4160-15-M

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 542**

**[Docket No. 93-53; Notice 1]**

**RIN 2127-AE67**

## Motor Vehicle Theft Prevention; Procedures for Selecting Lines Subject to Theft Prevention Standard

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend the procedures for the selection of new passenger motor vehicle lines that are likely to be high theft lines. This notice proposes to require manufacturers to inform NHTSA about new motor vehicle lines that the manufacturers plan to introduce for sale and provide an analysis whether the new line is likely to be a high or low theft line. In addition, this notice proposes amendments to implement changes made by the "Anti Car Theft Act of 1992" to the Motor Vehicle Information and Cost Savings Act.

**DATES:** Comments must be received on or before September 7, 1993.

**ADDRESSES:** All comments should refer to the docket number and notice number cited in the heading of this notice and be submitted, preferably in ten copies to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington DC 20590. Ms. Gray's telephone number is (202) 366-1740.

**SUPPLEMENTARY INFORMATION:**

### Motor Vehicle Theft Law Enforcement Act of 1984

The Motor Vehicle Theft Law Enforcement Act of 1984 (Pub. L. 98-547) (Theft Act), added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard." Part 541 establishes performance requirements for inscribing or affixing identification numbers onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603(a)(2) of title VI states that the specific lines, and the major parts of the vehicles within such lines, that are to be subject to the theft prevention standard may be selected by agreement between a manufacturer and the agency. If the agency and manufacturer disagree as to the selection, the agency must select the subject line and parts, after providing notice to the manufacturer and an opportunity for written comment.

Section 603(c) states that NHTSA "shall, *by rule, require* each manufacturer to provide information necessary to select pursuant to subsection (a)(2) the high theft lines and major parts to be subject to the standard." (Emphasis added.) However, as promulgated on August 28, 1985 (50 FR 34831), the agency's regulations regarding the selection of high theft lines did not require the submission of such information. Those regulations, which are contained in part 542, simply set forth the procedures to be followed by those manufacturers which voluntarily choose to provide the information and to participate in the selection process. The rationale for not including a requirement for the submission of the information was discussed in the June 20, 1985 notice of proposed rulemaking (50 FR 25603) proposing to establish part 542. In essence, the agency anticipated that the manufacturers would cooperate in providing the agency with their views and supporting analyses, and that, therefore, there was no need to adopt such a requirement.

Under the procedures in part 542, the manufacturer wishing to participate in the high theft line selection process applies the criteria in 49 CFR part 541 appendix C in preparing its views as to which of its passenger motor vehicle lines should be selected as high-theft lines for the purpose of the Theft Prevention Standard. Section 542.4 provides that between 18 to 24 months before the introduction of the line, the manufacturer submits its views to the agency, together with the facts it considered and supporting rationale for those views. The agency independently assesses the manufacturer's submission. Within a specified time period, the agency informs the manufacturer in writing of its preliminary determination whether any lines should be selected as high theft lines, and identifies any low theft lines.

If the manufacturer disagrees with the agency's preliminary determination, it may write to the agency, requesting a reconsideration. NHTSA makes its final

determination within 60 days of its receipt of the request for reconsideration. If the agency does not receive a request for reconsideration, NHTSA's preliminary determination becomes final 45 days after the agency sends the preliminary determination letter.

Since the establishment of part 542, some manufacturers have not consistently notified the agency about the introduction of new lines within the specified time frame of 18 to 24 months before introduction of each new line. Section 542.4(c)(3) currently provides that, upon receiving the evaluations of the manufacturers, NHTSA independently evaluates each new line, and preliminarily determines whether the line should be high or low theft. Delays by manufacturers in submitting information about new lines have, on occasion, prevented the agency from making its preliminary determination sufficiently in advance of the introduction of such lines to permit application of the Theft Prevention Standard to those lines during their introductory model year. In order for a new line to be subject to the Standard in its introductory year, it must be selected as high theft not less than 6 months before the beginning of that model year. If manufacturer submissions are untimely, the agency's determinations are untimely as well and, by default, are applied to the following model year. Thus, a year of coverage by the standard is lost.

Under § 542.4(c)(3), the agency attempts to make its preliminary determinations not later than 15 months before the beginning of the introductory model year. In some instances when the agency has learned of apparent plans to introduce a new line, despite the manufacturer's failure to timely provide NHTSA with information about the new line, the agency has found it necessary to rely primarily on information from trade publications (i.e., Automotive News, Road and Track, Motor Trend, Car and Driver, Consumer Reports, etc.) to make preliminary determinations for new car lines. Manufacturers have expressed dissatisfaction with agency reliance on these sources because they believe that the information reported in the trade publication is inaccurate and out-of-date. Manufacturers have also expressed displeasure about agency issuance of preliminary determinations before the manufacturer notifies the agency of its plans to introduce new lines because they perceive such agency action to be an attempt to second guess the manufacturer about the timing of the introduction of new model lines, or prevent the manufacturer from having input into the determination. However, the agency has had to act on its own initiative in such instances because the manufacturers did not notify the agency within the specified period of 18 to 24 months before the introduction of their new lines.

Accordingly, the agency proposes to implement section 603(c) of the Cost Savings Act by requiring that a manufacturer submit, for each of its planned lines, information relevant to the criteria set forth in appendix C of part 541. The agency also proposes that a manufacturer be required to submit such information not less than 18 months before introduction of the planned line. The agency proposes to permit submission of the information prior to 24 months before the introduction of the planned line, in order to provide as much flexibility to manufacturers as possible.

The agency believes that requiring manufacturers to submit the necessary information would provide the agency with more timely submissions of accurate and up-to-date data to evaluate. This would enable the agency to select more effectively and efficiently (by agreement with the manufacturer, if possible) those new lines likely to have a high theft rate. Also, since the information would be provided directly to the agency by the manufacturer, any need for the agency to rely upon trade reporting would presumably be eliminated.

In order to provide manufacturers with lead time to comply with the new mandatory procedures, the agency proposes to permit voluntary submission of information for lines that are introduced before model year 1997, and require compliance with the mandatory procedures for those lines introduced in the 1997 or subsequent model years. Similar proposals regarding voluntary and mandatory submission of information are proposed with respect to low theft new lines with a majority of major parts interchangeable with those of a high theft line.

NHTSA bases its tentative selection of model year 1997 as the first year for which it would be mandatory to submit information pursuant to part 542 on the following time considerations. The agency anticipates that, if made final, the rule amending part 542 would be published in the **Federal Register** by the spring of calendar year 1994. A final rule published in the spring of 1994, and made effective thirty days after publication, would provide ample time for manufacturers of vehicles to be introduced in model year 1997 (even for vehicles to be introduced in the early summer of 1996) to prepare and submit the required information not later than 18 months before the beginning of model year 1997.

NHTSA also proposed to remove from part 542 outdated information about procedures for motor vehicle manufacturers and NHTSA to follow in designation of likely high or likely low theft status for vehicle lines introduced before April 24, 1986 (i.e., pre-standard car lines). April 24, 1986 is the effective date of part 541, the Theft Prevention Standard. Since all new lines that would be subject to the proposed procedures in this notice are post-standard lines (i.e., lines introduced after April 24, 1986), the agency has tentatively concluded it is appropriate to remove the outdated references to lines introduced before April 24, 1986.

**Anti Car Theft Act of 1992**

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, is a comprehensive attack on automotive theft and fraud. The ACTA strengthens Federal penalties for motor vehicle theft, armed robbery of motor vehicles, and motor vehicle titling fraud. In addition to these new provisions, the ACTA amended title VI "Theft Prevention" of the Cost Savings Act.

Title VI was amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." (See section 601(1) of title VI.) Before the amendment of title VI, "passenger motor vehicle" was defined for the purposes of title VI to include passenger cars only. The effect of the redefinition is that certain light-duty truck lines and multipurpose passenger vehicle lines may be determined to be likely high theft vehicles, and thus, may be subject to the parts marking requirements of the Theft Prevention Standard.

Since part 542 specifies procedures for how new "lines" are to be determined as high or low theft without making any reference to "passenger cars," that part need not be amended to make its procedures applicable to light duty trucks and multipurpose passenger vehicles.

The agency draws special attention to part 542's section on procedures for selecting low theft new lines with a majority of major parts interchangeable with those of a high theft line. Before the amendment of title VI, interchangeability of major parts in lines meant interchangeability among major parts of other passenger car lines. With the broader definition of "passenger

motor vehicle," manufacturers and NHTSA must review interchangeability of major parts among all three vehicle classifications (i.e., passenger cars, and certain light-duty trucks and multipurpose passenger vehicles).

For the reasons previously discussed, manufacturers, responsibility to review interchangeability of major parts among vehicle classifications is voluntary for low theft vehicle liens introduced before model year 1997. For low theft vehicle lines introduced in model year 1997 and thereafter, manufacturers are required to review interchangeability of major parts among vehicle classifications, and are required to submit the results of such review to NHTSA.

NHTSA intends to begin its independent review of interchangeability of major parts among vehicle classifications when it makes final the new median theft rate based on 1990 and 1991 theft data. This new median theft rate was mandated in the Anti Car Theft Act of 1992. (See section 603 of the title VI.) NHTSA intends to publish the final median theft rate by December 1993. NHTSA's review will apply to low theft vehicle lines introduced after the calendar years 1990/1991 median theft rate has been made final. In conducting its independent review, NHTSA will rely for information on publicly available sources such as the automotive industry publications mentioned earlier in this notice, on owners' manuals for different motor vehicles, and on repair manuals published by motor vehicle manufacturers.

This proposed rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2020), provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act, (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

**Regulatory Impacts**

*A. Executive Order 12291*

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. If adopted as a final rule, the agency estimates there would be minimal reporting costs imposed on manufacturers of passenger motor vehicles. The agency estimates that the annual cost per manufacturer per year to report on new vehicle lines is $2,000. The agency estimates that the cost to all affected manufacturers totals $56,000 per year. These dollar figures are only a minuscule fraction of the threshold of $100 million for classifying a rulemaking action as "major" under the Executive Order.

The burden on manufacturers of light-duty trucks and multipurpose passenger vehicles would be minimal because relatively few new light-duty truck and multipurpose passenger vehicle lines are introduced in any year. The additional burden on manufacturers with respect to passenger cars, as a result of mandatory reporting, would also be minimal because most manufacturers are already providing new car line information on a voluntary basis.

Since there would be little additional reporting cost, NHTSA does not believe that this proposed rulemaking would affect the impacts described in the regulatory evaluation prepared for the proposal setting forth the substantive requirements of part 541. Accordingly, a separate regulatory evaluation has not been prepared for this proposed rule. Interested persons may wish to examine the regulatory evaluation that was prepared for the proposed rule setting forth the substantive requirements of part 541. Copies of that evaluation have been placed in Docket No. T84–01; Notice 4, and may be obtained in writing to: National Highway Traffic Safety Administration, Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590.

*B. Small Business Impacts*

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The definition of small business for those concerns that may be affected by this rulemaking action are found at 13 CFR part 121 under Standard Industrial Classification (SIC) Code 3711, manufacturers of "Motor Vehicles and Passenger Car Bodies." For SIC Code 3711, the SBA establishes an average of fewer than 1,000 employees during the preceding 12 months as the size standard for small business. I certify that this proposed rule would not, if promulgated as a final rule, have a significant economic impact on a substantial number of small entities. The rationale for this certification is that the reporting costs would be minimal and almost none of the manufacturers of passenger motor vehicles that would be subject to this rule would be considered a small business, a small non-profit organization, or a small governmental entity as defined by the SBA.

*C. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

*D. Paperwork Reduction Act*

The procedures in this proposed rule for manufacturers to submit preliminary decisions to NHTSA are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. The information collection requirements for part 542 have been submitted to and approved by the OMB pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) This collection of information has been assigned OMB Control No. 2127–0539 ("Procedures for selecting lines to be covered by the theft prevention standard") and has been approved for use through August 31, 1995.

*E. Federalism*

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

**Public Comments**

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (See 49 CFR 553.21.) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting

forth the information specified in the agency's confidential business information regulation. (See 49 CFR part 512).

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 542**

Administrative practice and procedure, National Highway Traffic Safety Administration, reporting requirements.

In consideration of the foregoing, it is proposed that 49 CFR part 542 be revised to read as follows:

## PART 542—PROCEDURES FOR SELECTING LINES TO BE COVERED BY THE THEFT PREVENTION STANDARD

Sec.

542.1 Procedures for selecting new lines that are likely to have high theft rates.
542.2 Procedures for selecting low theft new lines with a majority of major parts interchangeable with those of a high theft line.

**Authority:** 15 U.S.C. 2021, 2022, and 2023; delegation of authority at 49 CFR 1.50.

### § 542.1 Procedures for selecting new lines that are likely to have high theft rates.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any new line is likely to have a theft rate above the median theft rate.

(b) *Application.* These procedures apply to each manufacturer that plans to introduce a new line into commerce in the United States on or after April 24, 1986 and to each of those new lines.

(c) *Procedures.*

(1) (i) For each line introduced before the 1997 model year, each manufacturer uses the criteria in appendix C of part 541 of this chapter to evaluate each new line and to conclude whether the new line is likely to have a theft rate exceeding the median theft rate established for calendar years 1990 and 1991.

(ii) For each line introduced in the 1997 or subsequent model years, each manufacturer shall use the criteria in appendix C of part 541 of this chapter to evaluate each new line and to conclude whether the new line is likely to have a theft rate exceeding the median theft rate.

(2) (i) For each new line to be introduced before the 1997 model year, the manufacturer submits its evaluations and conclusions made under paragraph (c)(1)(i) of this section, together with the underlying factual information, to NHTSA not less than 18 months before the date of introduction. The manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(ii) For each new line to be introduced in the 1997 or subsequent model years, the manufacturer shall submit its evaluations and conclusions made under paragraph (c)(1)(ii) of this section, together with the underlying factual information, to NHTSA not less than 18 months before the date of introduction. The manufacturer may request a meeting with the agency during this period to further explain the bases for its evaluations and conclusions.

(3) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, whichever is sooner, the agency independently evaluates the new line using the criteria in appendix C of part 541 of this chapter and, on a preliminary basis, determines whether the new line should or should not be subject to § 541.2 of this chapter. NHTSA informs the manufacturer by letter of the agency's evaluations and determinations, together with the factual information considered by the agency in making them.

(4) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(3) of this section. The manufacturer shall submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(3). The request shall include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(5) Each of the agency's preliminary determinations under paragraph (c)(3) shall become final 45 days after the agency sends the letter specified in paragraph (c)(3) unless a request for reconsideration has been received in accordance with paragraph (c)(4) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

### § 542.2 Procedures for selecting low theft new lines with a majority of major parts interchangeable with those of a high theft line.

(a) *Scope.* This section sets forth the procedures for motor vehicle manufacturers and NHTSA to follow in the determination of whether any new lines that will be likely to have a low theft rate have major parts interchangeable with a majority of the covered major parts of a line having or likely to have a high theft rate.

(b) *Application.* These procedures apply to:

(1) Each manufacturer that produces—

(i) At least one passenger motor vehicle line that has been or will be introduced into commerce in the United States and that has been listed in appendix A of part 541 of this chapter or that has been identified by the manufacturer or preliminarily or finally determined by NHTSA to be a high-theft line under § 542.1, and

(ii) At least one passenger motor vehicle line that will be introduced into commerce in the United States on or after April 24, 1986 and that the manufacturer identifies as likely to have a theft rate below the median theft rate; and

(2) Each of those likely submedian theft rate lines.

(c) *Procedures.*

(1) (i) For each line that is to be introduced before the 1997 model year and that a manufacturer identifies under appendix C as likely to have a theft rate below the median rate, the manufacturer identifies how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in appendix A of part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high theft line under § 542.1.

(ii) For each new line that is to be introduced in the 1997 or subsequent model years and that a manufacturer identifies under appendix C as likely to have a theft rate below the median rate, the manufacturer shall identify how many and which of the major parts of that line will be interchangeable with the covered major parts of any other of its lines that has been listed in appendix A of part 541 of this chapter or identified by the manufacturer or preliminarily or finally determined by the agency to be a high-theft line under § 542.1.

(2) (i) If the manufacturer concludes that a new line that is to be introduced before the 1997 model year has a likely submedian theft rate and will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer determines whether all the vehicles of those lines with likely submedian theft rates and interchangeable parts will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(ii) If the manufacturer concludes that a new line that is to be introduced in the 1997 or subsequent model years has a likely submedian theft rate and will have major parts that are interchangeable with a majority of the covered major parts of a high theft line, the manufacturer shall determine whether all the vehicles of those lines with likely submedian theft rates and interchangeable parts will account for more than 90 percent of the total annual production of all of the manufacturer's lines with those interchangeable parts.

(3) (i) For new lines to be introduced before the 1997 model year, the manufacturer submits its evaluations and identifications made under paragraphs (c)(1)(i) and (2)(i) of this section, together with the underlying factual information, to NHTSA not more than 24 months before introduction of the new line and not less than 18 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(ii) For new lines to be introduced in the 1997 and subsequent model years, the manufacturer shall submit its evaluations and conclusions made under paragraphs (c)(1)(ii) and (2)(ii) of this section, together with the underlying factual information, to NHTSA not less than 18 months before the date of introduction. During this period, the manufacturer may request a meeting with the agency to further explain the bases for its evaluations and conclusions.

(4) Within 90 days after its receipt of the manufacturer's submission under paragraph (c)(2) of this section, or not later than 15 months before the introduction of each new line, whichever is sooner, the agency considers that submission, if any, and independently makes, on a preliminary basis, the determinations of those lines with likely submedian theft rates which should or should not be subject to § 541.5 of this chapter. NHTSA informs the manufacturer by letter of the agency's preliminary determinations, together with the factual information considered by the agency in making them.

(5) The manufacturer may request the agency to reconsider any of its preliminary determinations made under paragraph (c)(4) of this section. The manufacturer must submit its request to the agency within 30 days of its receipt of the letter under paragraph (c)(4) informing it of the agency's evaluations and preliminary determinations. The request must include the facts and arguments underlying the manufacturer's objections to the agency's preliminary determinations. During this 30-day period, the manufacturer may also request a meeting with the agency to discuss those objections.

(6) Each of the agency's preliminary determinations made under paragraph (c)(4) of this section becomes final 45 days after the agency sends the letter specified in that paragraph unless a request for reconsideration has been received in accordance with paragraph (c)(5) of this section. If such a request has been received, the agency makes its final determinations within 60 days of its receipt of the request. NHTSA informs the manufacturer by letter of those determinations and its response to the request for reconsideration.

Issued on: July 15, 1993.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 93-17252 Filed 7-20-93; 8:45 am]

BILLING CODE 4910-59-M

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## DEPARTMENT OF THE INTERIOR

**50 CFR Part 24**

**RIN 1018 AB28**

## Endangered and Threatened Wildlife and Plants; Designated Ports for Listed Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (the Service) proposes to amend the regulations that establish designated ports for the importation, exportation, and reexportation of plants by adding the U.S. Department of Agriculture (USDA) ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees that are listed as endangered or threatened, under the Endangered Species Act of 1973, as amended (the Act), or listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The Service also proposes to designate the USDA port at Wilmington, NC, as a port for the exportation of Venus flytrap (*Dionaea muscipula*) plants. The USDA has adequate facilities and personnel at these ports to qualify the ports as designated ports for the importation, exportation, and reexportation of plants under the terms of the Act and CITES. The addition of these nine ports to the list of designated ports would facilitate trade and the enforcement of the Act and CITES.

**DATES:** Comments must be submitted on or before September 20, 1993. Requests for a public hearing must be received by September 3, 1993.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Comments and materials may be hand-delivered to the same address between the hours of 8 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Marshall P. Jones, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 430, Arlington, Virginia 22203, telephone (703) 358-2095.

**SUPPLEMENTARY INFORMATION:**

### Background

The Endangered Species Act of 1973, as amended (the Act), requires, among other things, that plants be imported, exported, or reexported only at designated ports or, under certain limited circumstances, at nondesignated ports. Section 9(f) of the Act (16 U.S.C. 1538(f)) provides for the designation of ports. Under section 9(f)(1), the Secretary of the Interior (the Secretary) has the authority to establish designated ports based on a finding that such an action would facilitate enforcement of

the Act and reduce the costs of that enforcement. The United States Department of Agriculture (USDA) and the Secretary are responsible for enforcing provisions of the Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) relating to the importation, exportation, and reexportation of plants listed as endangered or threatened under the Act or listed under CITES.

The regulations contained in 50 CFR part 24, "Importation and Exportation of Plants," are for the purpose of establishing ports for the importation, exportation, and reexportation of plants. Plants that are listed as endangered or threatened in 50 CFR 17.12 or are listed in the appendices to CITES in 50 CFR 23.23 are required to be accompanied by documentation and may be imported, exported, or reexported only at one of the 15 USDA ports listed in § 24.12(a) of the regulations. Certain other USDA ports are designated for the importation, exportation, or reexportation of specific listed plants. Section 24.12(e) of the regulations contains a list of 87 USDA ports that are, for the purposes of the Act and CITES, designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened or under CITES. (The USDA regulations in 7 CFR 319.37 contain additional prohibitions and restrictions governing the importation of plants through those 87 ports.)

For the purposes of its enforcement of the Act and CITES, the Service requires that a port have personnel with expertise in identifying endangered or threatened plants, and CITES listed plants, to ensure that such plants are properly identified by their accompanying documentation. A port must also possess adequate facilities for holding live plants and plant material, since plants are subject to seizure if imported, exported, or reexported in violation of the Act or CITES. The Service further requires that, whenever possible, ports be located to coincide with established patterns of plant trade in order to help reduce shipping costs.

**Importation of Logs and Lumber From Listed Trees**

The USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, are currently designated ports for the importation, exportation, and reexportation of plants that are not listed as endangered or threatened or under CITES. The Service has been asked to further designate those ports as ports for the importation of logs and lumber from trees listed as endangered or threatened or under CITES. Logs and lumber from listed trees may currently be imported only through one of the 15 USDA ports designated for the importation, exportation, or reexportation of endangered or threatened plants or CITES listed plants. Importers wishing to import logs and lumber from listed trees into ports on the east coast of the United States may only use Hoboken, NJ, or Miami, FL. Importers wishing to import logs and lumber from listed trees into U.S. ports on the Gulf of Mexico have only Brownsville and Houston, TX, and New Orleans, LA.

After consultations with the USDA, the Service has determined that the USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, possess adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, these locations appear to coincide with established patterns of trade. Therefore, the Service proposes to establish these ports as designated ports for the importation of logs and lumber from listed trees.

**Exportation of Venus Flytrap**

The Venus flytrap (*Dionaea muscipula*) was added to Appendix II of CITES during the eighth meeting of the Conference of Parties to CITES, which was held March 2–13, 1992, in Kyoto, Japan. The addition of the Venus flytrap to Appendix II became effective on June 11, 1992. Appendix II includes species that, although not necessarily threatened with extinction, may become so unless trade in them is strictly controlled.

Now that the Venus flytrap has been added to Appendix II, the plant may be exported only through one of the 15 USDA ports designated for the importation, exportation, or reexportation of plants listed as endangered or threatened or under CITES. The Venus flytrap occurs chiefly in North Carolina and is also found in South Carolina, but the nearest ports through which the plant may currently be exported are Miami, FL, and Hoboken, NJ. Therefore, the State of North Carolina and some exporters of the Venus flytrap have requested that the Service establish the USDA port at Wilmington, NC, as a designated port for the exportation of the Venus flytrap.

After consultations with the USDA, the Service has determined that the USDA port at Wilmington, NC, possesses adequate facilities and personnel to carry out enforcement activities related to the Act and CITES. Additionally, the location appears to coincide with established patterns of trade. Therefore, the Service proposes to add Wilmington, NC, as a designated port for the exportation of the Venus flytrap.

**Miscellaneous**

In addition to the proposed changes set forth above, we correct a typographical error in the list of USDA ports currently found in § 24.12(e).

**Requests for Public Hearing**

Section 9(f)(1) of the Act provides that any person may request an opportunity to comment at a public hearing before the Secretary confers designated port status on any port. Accordingly, the Service will accept public hearing requests within 45 days of the publication of this proposed rule. These requests should be sent to the Office of Management Authority address listed in the "ADDRESSES" section of this document.

**Executive Order 12291 and Regulatory Flexibility Act**

The Service is issuing this proposed rule in conformance with Executive Order 12291, and has determined that it is not a "major rule." The Service has determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Service believes that establishing the USDA ports at Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened or under CITES would have a positive economic impact. These ports are major ports of entry for logs and lumber, but they currently may not be used to import logs and lumber from listed trees. Importers wishing to import logs and lumber from listed trees into a port on the east coast of the United States may only use Hoboken, NJ, or Miami, FL. Importers wishing to import logs and lumber from listed trees into a U.S.

port on the Gulf of Mexico may only use Brownsville and Houston, TX, and New Orleans, LA. Establishing Mobile, AL, Savannah, GA, Baltimore, MD, Morehead City and Wilmington, NC, Philadelphia, PA, Charleston, SC, and Norfolk, VA, as designated ports for the importation of logs and lumber from trees listed as endangered or threatened or under CITES would result in a savings in time and transportation costs for importers of logs and lumber.

The Service also believes that establishing Wilmington, NC, as a designated port for the exportation of Venus flytrap plants would have a positive economic impact. The Venus flytrap occurs chiefly in North Carolina and also in South Carolina. Before the inclusion of the Venus flytrap in Appendix II of CITES became effective, exporters of the Venus flytrap were able to use Wilmington, NC, and other USDA ports for the exportation of their plants. Since June 11, 1992, however, those exporters have been regulated by the ports designated for the importation, exportation, or reexportation of listed plants, with Miami, FL, and Hoboken, NJ, being the closest such ports to North Carolina and South Carolina. Establishing Wilmington, NC, as a designated port for the exportation of Venus flytrap would result in a savings in time and transportation costs for exporters of the plant.

Under these circumstances, the Service has determined that this action would not have a significant economic impact on a substantial number of small entities under 5 U.S.C. 601.

### Executive Order 12372

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

### Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws, regulations, or policies that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

### National Environmental Policy Act

The Service has determined that this proposed rule to add designated ports under authority of the Endangered Species Act of 1973 for the importation and exportation of plants is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

### Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 50 CFR Part 24

Import, Export, Endangered and threatened plants, Treaties (Agriculture).

Accordingly, we propose to amend 50 CFR part 24 as follows:

## PART 24—IMPORTATION AND EXPORTATION OF PLANTS

1. The authority citation for part 24 would continue to read as follows:

**Authority:** Secs. 9(f)(1), 11(f), Pub. L. 93–205, 87 Stat. 893, 897 (16 U.S.C. 1538(f)(1), 1540(f)).

2. In § 24.12, paragraph (e) would be redesignated as paragraph (g), and two new paragraphs, (e) and (f), would be added to read as follows:

**§ 24.12 Designated ports.**

* * * * *

(e) The U.S. Department of Agriculture ports at Philadelphia, Pennsylvania; Baltimore, Maryland; Norfolk, Virginia; Wilmington and Morehead City, North Carolina; Charleston, South Carolina; Savannah, Georgia; and Mobile, Alabama, are designated ports for the importation of logs and lumber from trees which are listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) or in 50 CFR 17.12 or 23.23 and which are required to be accompanied by documentation under 50 CFR part 17 or 23.

(f) The U.S. Department of Agriculture port at Wilmington, North Carolina, is a designated port for the exportation of plants of the species *Dionaea muscipula* (Venus flytrap), which is listed in Appendix II of CITES and which is required to be accompanied by documentation under 50 CFR part 23.

* * * * *

3. In newly redesignated § 24.12(g), the list of U.S. Department of Agriculture ports would be amended by removing the words "San Antonia, Texas" and replacing them with the words "San Antonio, Texas".

Dated: June 2, 1993.

**Richard M. Smith,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 93–17249 Filed 7–20–93; 8:45 am]

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# Notices

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

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 COMMERCE

### Foreign-Trade Zones Board

[Docket 30–93]

### Proposed Foreign-Trade Subzone Amoco Oil Company—Refinery/MTBE Facility Whiting, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indiana Port Commission, grantee of FTZ 152, requesting special-purpose subzone status for the Whiting oil refinery/MTBE facility of Amoco Oil Company, located in the Whiting, Indiana, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 9, 1993.

The facility (1,422 acres) is located at 2815 Indianapolis Boulevard, Whiting, Lake County, Indiana (parts also stretch into the cities of East Chicago and Hammond). The refinery (557,000 BPD; 1,600 employees) is used to produce fuel and chemical products. Fuels produced include gasoline, gasoline blendstocks and charging stocks, gas oil, fuel oil, diesel fuel, jet fuel and residual fuel. The company also plans to produce MTBE at the facility. Chemical products produced include refinery gases such as ethane, propane and butane; petrochemical feedstocks, such as xylene, propylene and butylene; and refinery byproducts, such as asphalt, sulfur, petroleum coke, waxes, and mineral oils. Most of the petroleum coke and sulfur is exported. All of the crude oil (90 percent of inputs), and some feedstocks, such as methanol, and some blendstocks, such as MTBE, are sourced abroad.

Zone procedures would exempt the refinery from Customs dutypayments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to choose the finished product duty rate in certain circumstances. For example, the company proposes to choose the zero duty rate that applies to certain refinery gases, such as ethane, propane and butane, certain petrochemical feedstocks, such as xylene, butylene and propylene, and certain refinery by-products, such as asphalt, sulfur and petroleum coke. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Foreign merchandise and merchandise to be exported would also be exempt from state and local *ad valorem* taxes.

MTBE (methyl tertiary butyl ether) is one of the blendstocks sourced from abroad. On MTBE which is blended with gasoline at the refinery and then sold in the U.S., Amoco proposes to choose the finished gasoline duty rate (1.25 cents/gallon). The duty rate on MTBE would otherwise be 5.6%. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 20, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (October 4, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, room 1406, 55 East Monroe St., Chicago, Illinois 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 14, 1993.

**John J. DaPonte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17325 Filed 7–20–93; 8:45 am]

BILLING CODE: 3510–DS–P

[Order No. 644; FTZ Docket 18–92]

### Louisville and Jefferson County Riverport Authority for Expanded Subzone Manufacturing Authority Toyota Motor Manufacturing, U.S.A., Inc., FTZ Subzone 29E

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

After consideration of the application of the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, filed with the Foreign-Trade Zones Board on June 16, 1992, requesting authority to expand subzone manufacturing authority at the automobile manufacturing plant of Toyota Motor Manufacturing, U.S.A., Inc., located in Georgetown, Kentucky (Subzone 29E), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and FTZ Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of July, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17328 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 637]

### Grant of Authority

### Establishment of a Foreign-Trade Zone, Rio Rancho, New Mexico, (Albuquerque Customs Port of Entry Area)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the City of Rio Rancho, New Mexico (the Grantee), has made application (filed 5–22–92, FTZ Docket 15–92, 57 FR 24017, 6/5/92) to the Board, requesting the establishment of a foreign-trade zone at sites in Rio Rancho, adjacent to the Albuquerque Customs port of entry; and,

*Whereas*, notice inviting public comment has been given in the **Federal Register** and the board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore*, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 194, at the sites described in the application, subject to the Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 7th day of June 1993.

Foreign-Trade Zones Board.

**Ronald H. Brown,**

*Secretary of Commerce, Chairman and Executive Officer.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17326 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–P

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[Order No. 643]

## Grant of Authority for Subzone Status

## Ford Motor Company, (Passenger/Cargo Vehicles) Avon Lake, OH

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, an application from the Cleveland Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, for authority to establish a special-purpose subzone for the passenger and cargo vehicle manufacturing plant of the Ford Motor Company, Avon Lake, Ohio, was filed by the Board on August 14, 1991, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 47–91, 56 FR 42025, 8–26–91); and,

*Whereas*, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 40C) at the Ford Motor Company plant in Avon Lake, Ohio, at the location described in the application, subject to FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of July, 1993.

**Joseph A. Spetrini,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 93–17327 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration

## Initiation of Antidumping and Countervailing Duty Administrative Reviews

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with June anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** July 21, 1993.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 482–2104.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with June anniversary dates.

### Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than June 30, 1994.

| Antidumping duty processings | Period to be reviewed |
|---|---|
| Canada: | |
| Oil country tubular goods, A–122–506: | |
| Ipsco, Inc | 6/1/92–5/31/93 |
| Red raspberries, A–122–401: | |
| Clearbrook Packers Inc., Valley Berries Inc | 6/1/92–5/31/93 |
| France: | |
| Large power transformers, A–427–030: | |
| Jeumont-Schneider | 6/1/92–5/31/93 |
| Germany: | |
| High tenacity rayon filament yarn, A–428–810: | |
| Akzo Faser AG | 2/20/91–5/31/93 |
| The Hungarian People's Republic: | |
| Tapered roller bearings and parts thereof, finished and unfinished, A–437–601: | |
| Magyar Gordulocsapagy Muvek | 6/1/92–5/31/93 |
| Italy: | |
| Large power transformers, A–475–031: | |
| Tammanni | 6/1/92–5/31/93 |
| Japan: | |
| Fish Netting of man-made fibers, A–588–029: | |
| Yamaji Fishing Net Co., Ltd | 6/1/92–5/31/93 |
| Industrial belts, A–588–807: | |
| Mitsuboshi Belting Limited | 6/1/92–5/31/93 |
| Polyethylene terephthalate film, sheet and strip, A–588–814: | |
| Diafoil, Teijin, Ltd., Toray Industries, Inc | 6/1/92–5/31/93 |
| The Republic of Korea: | |
| Polyethylene terephthalate film, sheet and strip, A–580–807: | |
| Cheil Synthetics Inc., Kolon Industries, Inc., SKC Limited, STC Corp | 6/1/92–5/31/93 |

| Antidumping duty processings | Period to be reviewed |
|---|---|
| New Zealand: | |
| Fresh kiwifruit, A–614–801: | |
| New Zealand Kiwifruit Marketing Board | 11/27/91–5/31/93 |
| The People's Republic of China: | |
| Sparklers, A–570–804: | |
| Guangxi Native Produce Import & Export Corporation, Behai Fireworks & Firecrackers Branch | 6/1/92–5/31/93 |
| Tapered roller bearings and parts thereof, A–570–601: | |
| Harbin Bearing Factory | 6/1/92–5/31/93 |
| Luoyang Bearing Factory | |
| Wafangdian Bearing Factory | |
| Shanghai General Bearing Co., Ltd. | |
| Shanghai Rolling Bearing Factory | |
| Xiangyang Bearing Factory | |
| Chengdu General Bearing Factory | |
| Hailin Bearing Factory | |
| Guiyang Bearing Factory | |
| Haihong Bearing Factory | |
| Lanzhou Bearing Factory | |
| Xibei Bearing Factory | |
| Changzhi Bearing Factory | |
| Jining Bearing Factory | |
| Shenyang Bearing Factory | |
| Gongzhuling Bearing Factory | |
| Jiamusi Bearing Factory | |
| Hangzhou Bearing Factory | |
| Jiangxi Bearing Factory | |
| Liangshan Bearing Factory | |
| Yantai Bearing Factory | |
| Northwest Bearing Factory | |
| Huangshi Bearing Factory | |
| Guangxi Bearing Factory | |
| Chongqing Bearing Factory | |
| Yunnan Bearing Factory | |
| Baoji Bearing Factory | |
| Xiangtan Bearing Factory | |
| Shaoguan Bearing Factory | |
| Xinjiang Bearing Factory | |
| The Second Bearing Factory of Xuzhou | |
| Yuxi Bearing Factory | |
| Changde Bearing Factory | |
| Chengdu Bearing Factory | |
| Handan Bearing Factory | |
| Xingcheng Bearing Factory | |
| Premier Bearing & Equipment, Ltd. | |
| Chin Jun Industrial, Ltd. | |
| China National Machinery and Equipment Import and Export Corporation (CMEC) | |
| Henan Co., Ltd. | |
| Liaoning Co., Ltd. | |
| Jilin Machinery Import and Export Corporation | |
| Guizhou Machinery Import and Export Corporation | |

**Countervailing Duty Proceedings**

None.

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1992).

Dated: July 13, 1993.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 93–17324 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–DS–M

## COMMODITY FUTURES TRADING COMMISSION

### Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee (FPAC) has changed the date of its next public meeting from July 29, 1993 to August 5, 1993. This public meeting will be held in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, from 1:30 p.m. until 5 p.m. The agenda will consist of:

1. A presentation on the AUDIT system being developed by the Chicago Board of Trade and the Chicago Mercantile Exchange;
2. A panel discussion of regulators concerning the capital treatment of derivatives;
3. A panel discussion on the prospects for development of a swaps clearinghouse;
4. Briefings on proposed rule amendments of interest to FPAC including Rule 4.5 and Rule 1.35; and
5. Other items of Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, CFTC Commissioner Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Susan Milligan, 2033 K Street NW:, Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Milligan in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC, on July 15, 1993.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 93–17205 Filed 7–20–93; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**AGENCY:** DOD.

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Title:* Default for Failure to Submit Revised Delivery Schedule
*Type of Request:* New collection
*Number of Respondents:* 36
*Responses Per Respondent:* 1
*Annual Responses:* 36
*Average Burden Per Response:* 2 hours
*Annual Burden Hours:* 72
*Needs and Uses:* This clause gives Contracting Officers the authority to require a contractor to submit a revised delivery schedule and the failure to do so will be grounds for termination. The need for the clause arises when a contractor fails to meet the delivery schedule and then refuses to cooperate in establishing a revised schedule.
*Affected Public:* Businesses or other for profit; Non-profit institution; and Small businesses or organizations
*Frequency:* On occasion
*Respondent's Obligation:* Required to obtain or retain a benefit
*OMB Desk Officer:* Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
*DOD Clearance Officer:* Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17239 Filed 7-20-93; 8:45 am]

BILLING CODE 5000-04-M

## Office of the Secretary

### Determination; Armed Forces Assistance

Pursuant to section 515(c) of the Foreign Assistance Act relating to overseas management of assistance and sales programs, and in accordance with the authority delegated by Executive Order 12163 and redelegated on February 12 and February 24, 1972, to the Director, Defense Security Assistance Agency, the Director, Defense Security Assistance Agency, Lt Gen Teddy G. Allen, has determined that United States national interests require that more than six members of the Armed Forces be assigned under section 517 of the FAA to carry out international security assistance programs in Kuwait, and therefore waive the limitation that the number of members of the Armed Forces assigned to a foreign country under section 515 of that Act may not exceed six unless specially authorized by the Congress.

The total number of eleven military personnel authorized to the Office of Military Cooperation (OMC)—Kuwait shall be effective thirty days after the date on which this determination is reported to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives.

Dated: July 15, 1993.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 93-17238 Filed 7-20-93; 8:45 am]

BILLING CODE 5000-04-M

## Department of the Army

### Army Science Board; Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

*Name of Committee:* Army Science Board (ASB).
*Date of Meeting:* 5 August 1993.
*Time of Meeting:* 0900-1630 hours.
*Place:* Fort Knox, Kentucky.
*Agenda:* The Army Science Board's C31 Issue Group members will travel to Fort Knox, Kentucky to receive orientation briefings. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695-0781.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 93-17201 Filed 7-20-93; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

### National Education Goals Panel; Amendment

**AGENCY:** National Education Goals Panel; Education.

**ACTION:** Amendment to notice.

**SUMMARY:** Notice is hereby given of an amendment to the meeting of the National Education Goals Panel scheduled for July 27, 1993 at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, DC, as published in the **Federal Register** on Thursday, July 8, 1993, Vol. 58, No. 129, page 36657. The location of the meeting is changed to the Holiday Inn Crowne Plaza, Metro Center, 775 12th Street NW., Washington, DC. The meeting will begin at 12:30 p.m. and end at 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Ruth Whitman Chacon, Public Information, 1850 M Street, NW, suite 270, Washington, DC 20036. Telephone: (202) 632-0952.

Dated: July 16, 1993.

**Ann V. Bailey,**

*Committee Management Officer, U.S. Department of Education.*

[FR Doc. 93-17332 Filed 7-20-93; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Noncompetitive Award of Financial Assistance; American Council for an Energy-Efficient Economy

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Chicago Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to American Council for an Energy Economy (ACEEE). The award amount to ACEEE will be used towards facilities in which a workshop will take place for the transfer of research results in the area of industrial demand side management strategies. Public Law 95-224 provides the statutory authority for the proposed award.

**SUPPLEMENTARY INFORMATION:** ACEEE is an educational and research organization dedicated to the promotion of technologies, policies, and programs that improve energy efficiency. ACEEE has been extensively involved in efforts to improve building energy efficiency. The workshop and the resulting

proceedings will provide needed data to the DOE and will allow for the transfer of research results in the area of industrial demand side management strategies.

The grant application is being accepted by DOE because of the unique combination of resources and experience possessed by ACEEE which will enhance the public benefit. The activity would be conducted by the applicant using its own resources or provided by third parties; however, DOE knows of no other entity which is conducting or is planning to conduct such an activity in the near or distant future. The project period for the grant award is expected to begin in August 1993 for a one week period. DOE plans to provide funding in the amount of $15,000 for this project.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey James, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, suite 3950, Seattle, WA 98104, (206) 553–2079.

Issued in Chicago, Illinois, on July 7, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–17311 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

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## Noncompetitive Award of Financial Assistance; Georgia Tech Research Corp.

**AGENCY:** Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office, through the Atlanta Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a grant to the Georgia Tech Research Corporation to support an assessment of the potential for the development, at the Georgia Institute of Technology, of a campus-wide district cooling system incorporating state-of-the-art refrigeration systems, current underground piping technology, thermal storage options, and integrated resource optimization through state-of-the-art control technology.

**FOR FURTHER INFORMATION CONTACT:** Warren Zurn, U.S. Department of Energy, Atlanta Support Office, (404) 347–1047.

**SUPPLEMENTARY INFORMATION:** Facilities planned for the 1996 Olympic Games, ongoing dormitory construction, and future education buildings will require modification of the existing chilled water distribution system and additional central plant facilities or the construction of individual building refrigeration systems. The Georgia Tech Office of Facilities has begun an evaluation of satellite chiller plants and optimization of the existing district cooling system, but the Institute lacks sufficient funds to fully explore development of a campus-wide district cooling system incorporating state-of-the-art technologies. The award of federal funds for this project will enable them to identify suitable technologies for implementation. Since the campus will serve at the Olympic Village during the 1996 Summer Games, it is expected that the resulting project will serve as a showcase for the world of American energy efficiency technologies. The grant application is being accepted by DOE because the Institute is using its own resources to conduct the evaluation, however DOE support would enhance the public benefits to be derived and DOE knows of no other entity is conducting or is planning to conduct a similar project with the potential to provide a showcase for this energy efficiency technology during the 1996 Olympics. The project period for the grant is a sixteen month period expected to begin in June 1993. DOE plans to provide in the amount of $61,816 for this project period.

Issued in Chicago, Illinois, on June 25, 1993.

**Alan E. Smith,**

*Director, Operations Management Support Division.*

[FR Doc. 93–17312 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

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## Kansas City Support Office

## Noncompetitive Financial Assistance Award to Kansas State University, Engineering Extension Service

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of noncompetitive financial assistance award.

**SUMMARY:** The U.S. Department of Energy (DOE), Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7 (b)(2), DOE intends to make a noncompetitive financial assistance award to Kansas State University, Engineering Extension Service (KSU/EES), for technical assistance in the DOE/HUD Base System Analysis Maintenance Program.

**SUPPLEMENTARY INFORMATION:** KSU/EES provided technical, computer, and software support for the DOE/HUD Initiative in FY91 and FY92. That effort will be continued and evolve in the FY93 project effort. KSU/EES will: (1) Continue field tests of the procurement documents, utility record system and management plan developed in the two previous years; (2) assist in integrating the "tools" and philosophies (item 1), developed during the project, into the HUD/PHA management process; (3) update the current URS (utility record system) Manual to reflect any new version of ENACT, determine the potential contractual options and costs if it were used on a regional or national scale, and append the current manual for use by regional HUD engineers; and (4) develop promotional and presentation materials for/and make presentations to appropriate regional and national meetings. Due to their prior involvement, and associated experience, their staff is uniquely qualified to continue the efforts associated with their assigned tasks. KSY/EES has expended much time and effort in helping analyze the extensive engineering and facility management relationships and complexities that are associated with the program. It would not be cost effective to sever that *base of knowledge* in either time or funds because competition for support would have a significant adverse effect on continuity and completion of the project in the time frame approved by DOE Washington

The project period for the grant award is 12 months, beginning on September 30, 1993, to be completed on/or before September 30, 1994. Total funding for the FY93 portion of the project is expected to be approximately $65,000.

**FOR FURTHER INFORMATION CONTACT:** Kirk M. Bond, Project Engineer, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, suite 1411, Kansas City, MO 64106–2024, Phone: (816) 426–7054, Fax: (816) 426–6860.

Issued in Chicago, Illinois, on: July 7, 1993.

**Timonty S. Crawford,**

*Assistant Manger for Administration.*

[FR Doc. 93–17331 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

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## Noncompetitive Award of Financial Assistance; The Research Foundation of State University of New York

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to make an award based on an unsolicited application.

**SUMMARY:** The Department of Energy (DOE), Chicago Operations Office, through the New York Support Office (NYSO), announces, pursuant to the

DOE Financial Assistance Rules 10 CFR 600.14(f), that DOE intends to award a grant to The Research Foundation of State University of New York, Dr. Deborah D.L. Chung, principal investigator, for the purpose of completing the development of a lighter weight carbon fiber composite while retaining its present superior properties.

**SUPPLEMENTARY INFORMATION:** The Department of Energy announces further that pursuant to 10 CFR 600.6(a)(2), this discretionary financial assistance award to The Research Foundation of State University of New York, would be based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(i). Advantage over the current technology is that the fatigue life of carbon fiber-reinforced polymer composites would be increased a hundred fold by simply adding a several volume percent of low melting point alloy powder particles at the final stage of the normal processing method for composites. The proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation would be inappropriate. The extent of the energy savings would be significant, for example, in savings of operating expenses from the reduced weight of operating commercial aircraft. The project period for the grant award is 18-months expected to begin as soon as possible. DOE plans to provide funding in the amount of $95,573.

**FOR FURTHER INFORMATION CONTACT:** Charles F. Baxter, U.S. Department of Energy, New York Support Office, room 3437, New York, NY 10278.

Issued in Chicago, Illinois, on July 8, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–17313 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–M

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## Noncompetitive Financial Assistance Award to the Wisconsin Center for Demand-Side Research

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice of noncompetive financial assistance award.

**SUMMARY:** The Department of Energy, Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetive financial assistance award to the Wisconsin Center for Demand-Side Research, to carry out activities which will facilitate collaboration between DOE, state governments, industries, utilities, electric motor equipment manufacturers and service companies, and others, on technical and market related issues of electric motor systems in a ten state area (Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin).

**SUPPLEMENTARY INFORMATION:** The Wisconsin Center for Demand-Side Research is a non-profit organization organized to work cooperatively with investor owned and public utilities, utility regulators, public interest groups, and the general public to conduct research and training programs, and to distribute information to help accelerate the adoption of energy efficient options and practices. The Center has worked in partnership with the DOE, national and state energy research organizations, and Canadian utilities on a wide range of energy efficient technology and market issues. In the last three years, the Center has conducted a unique project to identify ways to remove barriers for efficient electric motors and adjustable speed drives. This award will further the objectives of the DOE, Industrial Electric Motor Systems Program in promoting the use of efficient electric motor systems. Therefore, the application is being accepted because DOE knows of no other opportunity to conduct such a project by any other organization or entity.

The project period for this award is 12 months and is expected to begin in August of 1993. DOE plans to provide funding in the amount of $55,000 for this effort.

**FOR FURTHER INFORMATION CONTACT:** Chris Cockrill, Technology Marketing Division, U.S. Department of Energy, Kansas City Support Office, 911 Walnut Street, Kansas City, MO 64106–2024. (816) 426–4772.

Issued in Chicago, Illinois, on July 7, 1993.

**Timothy S. Crawford,**

*Assistant Manager for Administration.*

[FR Doc. 93–17314 Filed 7–20–93, 8:45 am]

BILLING CODE 6450–01–M

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## Office of Fossil Energy

**[FE Docket No. 93–63–NG]**

## Conoco, Inc.; Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico, and To Export Liquefied Natural Gas to Any Foreign Country

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Conoco, Inc. (Conoco) on June 28, 1993, as amended July 9, 1993, requesting blanket authorization to import and export natural gas from and to Mexico. In addition, Conoco requests authorization to export liquefied natural gas (LNG) to any foreign country. Conoco proposes to import and export up to a combined total of 50 Bcf of natural gas and LNG over a period of two years beginning on the date of the first import or export delivery after July 31, 1993, the expiration date of Conoco's existing blanket import and export authorization granted by DOE/FE Opinion and Order No. 524 (1 FE ¶ 70,472, July 26, 1991).

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address below no later than 4:30 p.m., eastern time, August 20, 1993.

**ADDRESSES:** Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

**FOR FURTHER INFORMATION CONTACT:**

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9482.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

**SUPPLEMENTARY INFORMATION:** Conoco is a Delaware corporation with an office in Houston, Texas. It proposes to import and export the gas and LNG under spot and short-term transactions, either on its own behalf or as the agent for others. Conoco states that the specific terms of these arrangements would be negotiated individually, and the price would be competitive. The imports and exports would take place using existing pipeline and LNG facilities and no new construction would be involved. If this application is approved, Conoco would be required to file quarterly reports with DOE giving the specific details of each transaction.

Conoco's application originally included a request to extend its current authority to import and export natural gas from and to Canada, and to import LNG from any foreign country. That authority also was conferred by DOE/FE Opinion and Order No. 524 and will expire July 31, 1993. However, Conoco amended its application on July 9, 1993, so that these activities would be reviewed in a separate proceeding (93-72-NG). Requests for authority to import/export natural gas from/to Canada, and applications to import LNG generally, are not noticed in the Federal Register for public comment. Proceedings limited to such requests, therefore, are shorter. This reflects section 201 of the Energy Policy Act of 1992, which amended section 3 of the NGA. Under section 3(c), an import of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. Conoco's "Canadian" application meets this public interest finding. This statutory public interest finding also applies to LNG imports, regardless of whether the United States has a free trade agreement with the foreign supplier. DOE will address Conoco's application filed in docket 93-72-NG in a separate order.

The decision on Conoco's request for authority to import natural gas from Mexico will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing Conoco's proposal to export natural gas to Mexico and export LNG to any foreign country, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues. Conoco asserts the proposed imports would be competitive and that there is no current need for the domestic gas and LNG that would be exported. Parties opposing Western's application bear the burden of overcoming these assertions.

**NEPA Compliance**

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

**Public Comment Procedures**

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Conoco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1993.

**Anthony J. Como,**

*Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.*

[FR Doc. 93-17452 Filed 7-19-93; 1:27 pm]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

### Liberty Pipeline Project: Postponement of Draft Environmental Impact Statement

July 16, 1993.

In the matter of Liberty Pipeline Company, Docket No. CP92-715-000; Texas Eastern Transmission Corporation, Docket Nos. CP92-716-000, CP92-719-000, CP92-720-000, and CP93-108-000; Texas Eastern Transmission Corporation and Trunkline Gas Company, Docket No. CP92-717-000, Docket No. CP92-718-000; Transcontinental Gas Pipe Line Corporation, Docket No. CP92-721-000; Texas Gas Transmission Corporation, Docket Nos. CP92-730-000, and CP92-734-000.

The Federal Energy Regulatory Commission (Commission) staff notifies all parties that it is postponing its Draft Environmental Impact Statement (DEIS) of the Liberty Pipeline Project (Liberty) due to the actions described below. The Commission staff will publish the DEIS for this project after it reviews forthcoming amended applications for upstream facilities from:

- Texas Gas Transmission Corporation (Texas Gas)—stated on March 26, 1993 that it will amend its applications to relocate 21.9 miles of its proposed upstream facilities; and
- the Liberty partners—notified the Secretary of the Commission on May 25, 1993 that the proposed in-service date for the project has changed from November 1, 1994 to November 1, 1995.

The Liberty partners also stated that they will file certain necessary amendments to their applications with the Secretary of Commission no later than September 1, 1993.

After the Commission's staff receives and analyzes the information in the above-referenced amended applications, the Commission will announce a schedule as soon as it is practicable.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17305 Filed 7-20-93; 8:45 am]

BILLING CODE 6717-01-M

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**[Project Nos. 2100-054 et al.]**

## Hydroelectric Applications [California Department of Water Resources et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. *Type of Application:* Amendment of License.

b. *Project No:* 2100-054.

c. *Date Filed:* June 1, 1993.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Project.

f. *Location:* Feather River in Butte County, California.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act.

h. *Applicant Contact:* Mr. Dan Peterson, California Department of Water Resources, Division of Operations and Maintenance, 1416 Ninth Street, P.O. Box 942836, Sacramento, CA 94236-0001, (916) 653-9978.

i. *FERC Contact:* Jon E. Cofrancesco, (202) 219-2650.

j. *Comment Date:* September 28, 1993.

k. *Description of Project:* The California Department of Water Resources (licensee) has filed, for Commission approval, an amended proposed recreation plan for the Feather River Project. The filed plan specifies additional recreational facilities and programs to be provided at the project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2. a. *Type of Application:* New License.

b. *Project No.:* 1999-004.

c. *Date filed:* June 24, 1993.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Wausau Hydroelectric Project.

f. *Location:* On the Wisconsin River, in Marathon County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. T.P. Meinz, Senior Vice President, Wisconsin Public Service Corporation, 700 North Adams, P.O. Box 19002, Green Bay, WI 54307, (414) 433-1293.

i. *FERC Contact:* Michael Dees, (202) 219-2807.

j. *Comment Date:* 60 days from the filing date in paragraph c. (August 23, 1993).

k. *Description of Project:* The project consists of the following features: (1) An existing dam and 284 acre reservoir; (2) an existing powerhouse housing three hydropower units with a combined capacity of 5,400 kW; and (3) appurtenant facilities.

l. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

3. a. *Type of Application:* Subsequent License.

b. *Project No.:* 2394-006.

c. *Date Filed:* June 20, 1991.

d. *Applicant:* Wisconsin Electric Power Company.

e. *Name of Project:* Chalk Hill.

f. *Location:* On the Menominee River in Menominee County, Michigan, and Marinette County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. David K. Porter, Wisconsin Electric Power Company, 231 West Michigan Street, P.O. Box 2046, Milwaukee, WI 53201, (906) 779-2400.

(i) *FERC Contact:* Charles T. Raabe, (tag) (202) 219-2811.

j. *Deadline Date:* See attached paragraph D6. (September 13, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The project as licensed consists of the following: (1) A 300-foot-long concrete gravity spillway, which is about 24 feet high, has a crest elevation of 732.4 feet National Geodetic Vertical Datum (NGVD), and has: (a) 11 Taintor gates which are 12 feet high by 24 feet wide; and (b) an inoperable 6-foot-wide fish sluice located near the right end of the spillway; (2) an earthen dike 1,373 feet long and 38 feet high; (3) a reservoir with a surface area of 834 acres and a total volume of 6,757 acre-feet at the normal maximum elevation of 744.2 feet NGVD; (4) a powerhouse near the left bank, which has three turbine-generator units rated at 2,600 kilowatts (kW) each for a total installed capacity of 7,800 kW; (5) one substation located adjacent to the powerhouse; (6) the primary transmission line; and (7) appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant estimates the average annual generation would be 43.1 GWh and owns all existing project facilities.

The existing project would be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the license expiration of June 30, 1993, the Applicant's estimated net investment in the project would amount to $367,190.

m. *Purpose of Project:* All project energy generated would be utilized by the Applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and D6.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Wisconsin Electric Power Company Real Estate Department, room A440, 231 West Michigan, Milwaukee, WI 53203, Phone (906) 779-2400.

4. a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2444-002.

c. *Date Filed:* December 20, 1991.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* White River Hydro Project.

f. *Location:* On the White River in Ashland County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, Vice President, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2621.

i. *FERC Contact:* Ed Lee, (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (September 13, 1993).

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed consists of the following: (1) Two existing earthen embankments, a 400 foot long northern section and a 300 foot long southern section, with a maximum height of 48 feet; (2) an existing reservoir with a surface area of 56 acres and an estimated 391 acre-feet of total storage volume at the normal maximum surface elevation of 711.2 MSL; (3) an existing reinforced concrete spillway section, 70 feet long, composed of (a) a gated spillway section with two 25 foot long by 26.5 foot tall bays, each housing a radial steel Tainter gate, and (b) a reinforced concrete non-overflow section, approximately 20 feet long, with an intake structure for the 7 foot diameter pipeline; (4) existing intake and outlet works consisting of (a) a 7 foot diameter reinforced concrete pipeline, 1,345 feet long, (b) a steel surge tank, 16 feet in diameter by 62 feet tall, and (c) a 54 inch steel y-shaped penstock that feeds water from the surge tank to the powerhouse; (5) an existing powerhouse, constructed of reinforced concrete and brick masonry, 39 feet by 69 feet and 1 story tall, containing (a) two horizontal Francis turbines with a combined hydraulic capacity of 280 cfs, manufactured by S. Morgan Smith, (b) two Westinghouse generators, rated at 500 kW each for a total of 1,000 kW; (6) and existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 5,326 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company, 100 North Barstow Street, Eau Claires, WI or calling (715) 839–2621.

5. a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2475–006.

c. *Date filed:* December 18, 1991.

d. *Applicant:* Northern States Power Company—Wisconsin.

e. *Name of Project:* Thornapple.

f. *Location:* On the Flambeau River near Thornapple and Grant in Rusk County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839–2401.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* See paragraph D9. (September 13, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The licensed project would consist of the following existing facilities: (1) A 370-foot-long gated spillway; (2) a reservoir with a surface area of 295 acres at surface elevation 1,081 feet m.s.l. and a storage area of 1,000 acre feet; (3) a powerhouse containing two generating units each with a rated capacity of 700 kW; and (4) appurtenant facilities. The applicant is proposing no changes to the project. The average annual net energy generation is 8,575,075 kWh. The total book value of the project through 1990 is $1,330,000.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Northern States Power Company (Wisconsin), 100 N. Barstow Street, Eau Claire, WI 54702–008 or by calling (715) 839–2621.

6. a. *Type of Application:* Preliminary Permit.

b. *Project No:* 11396–000.

c. *Date filed:* March 25, 1993.

d. *Applicant:* Pine River Irrigation District.

e. *Name of Project:* Morrison Power Plant Project.

f. *Location:* On the Pine River in LaPlata County, Colorado, near the towns of Bayfield, Durango, and Ignacio. T.34N., R7W, sections 10, 11, 14, 3U, 10U, and 15U.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Witt, President, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558; Joe Brown, Manager, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* September 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) A rock rubble intake structure; (2) enlarging the first 12,600 feet of the Morrison Consolidated Canal; (3) a 4-foot-high check structure; (4) a 1,500-foot-long, 6-foot-diameter penstock; (5) a powerhouse containing two generating units with a total capacity of 1,555 kW, producing an average annual energy output of 8,540,000 kWh; (6) a 1,000-foot-long open conduit discharging project flows into Pine River; and (7) a 12.4–kV, 2.5-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $25,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11397–000.

c. *Date filed:* March 25, 1993.

d. *Applicant:* Pine River Irrigation District.

e. *Name of Project:* King Power Plant Project.

f. *Location:* On the Pine River in LaPlata County, Colorado, near the towns of Bayfield, Durango, and Ignacio. T.34N., R.7W, sections 10 and 11.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Witt, President, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558; Joe Brown, Manager, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. *Comment Date:* September 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) A rock rubble intake structure; (2) enlarging the first 5,400 feet of the King

Consolidated Canal; (3) a 4-foot-high check structure; (4) a 700-foot-long, 7-foot-diameter penstock; (5) a powerhouse containing two generating units with a total capacity of 1,455 KW, producing an average annual energy output of 8,252,000 KWh; (6) a tailrace; and (7) a 12.4-kV, 3,000-foot-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $25,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11398–000.

c. *Date filed:* March 25, 1993.

d. *Applicant:* Pine River Irrigation District.

e. *Name of Project:* Thompson-Epperson Water Power Project.

f. *Location:* On the Pine River in LaPlata County, Colorado, near the towns of Bayfield, Durango, and Ignacio. T.34N., R.7W, sections 2, 3, 10 and 11. T.35N., R.7W, sections 23, 26 and 35.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert Witt, President, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558; Joe Brown, Manager, Pine River Irrigation District, 13029 County Road 501, Bayfield, CO 81122, (303) 884–2558.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219–2842.

j. *Comment Date:* September 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) a rock rubble intake structure; (2) 3.5-miles of the Thompson-Epperson Consolidated Canal; (3) a 2.5-foot-high check structure; (4) a 300-foot-long, 2.25-foot-diameter penstock; (5) a powerhouse containing a single generating unit with a total capacity of 240 KW, producing an average annual energy output of 2,100,000 KWh; (6) a tailrace; and (7) a 12.4-kV, 2,000-foot-long transmission line typing into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $15,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9. a. *Type of Application:* New Major License.

b. *Project No.:* 2420–001.

c. *Date filed:* December 23, 1991.

d. *Applicant:* PacifiCorp Electric Operations.

e. *Name of Project:* Cutler Hydroelectric Project.

f. *Location:* On the Bear River near the city of Logan, in Cache and Box Elder Counties, Utah.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Stanley A. deSousa, Director, Hydro Resources, PacifiCorp Electric Operations, 920 S.W. Sixth Avenue, Portland, Oregon 97204, (503) 464–5343.

i. *FERC Contact:* Mr. Hector Perez, (202) 219–2843.

j. *Comment Date:* September 13, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* This project consists of: (1) A 109-foot-high, 545-foot-long concrete gravity arch dam; (2) a 5,459-acre reservoir; (3) a 1,160-foot-long, 18-foot-diameter flowline; (4) two 120-foot-long, 14-foot-diameter steel penstocks extending from a bifurcation in the flowline to a powerhouse; (5) the powerhouse containing two generating units with a total installed capacity of 30 MW; (6) step-up transformers connecting to transmission facilities; and (7) appurentant facilities.

The Applicant is not proposing any changes to the existing project facilities as licensed. The estimated average annual generation for the Cutler project is 106,014 MWh.

m. *Purpose of Project:* All energy generated by the project would be utilized by the customers of PacifiCorp Electric Operations.

n. This notice also consists of the following standard paragraphs: D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the office of PacifiCorp Electric Operations, located at 920 S.W. Sixth Avenue, Portland, Oregon 97204, or by calling Mr. Stanley A. deSousa at (503) 464–5343.

10. a. *Type of Application:* Surrender of License.

b. *Project No.:* 7568–027.

c. *Date filed:* June 14, 1993.

d. *Applicant:* Allegheny County, Pennsylvania.

e. *Name of Project:* Dashields Lock and Dam Project.

f. *Location:* U.S. Corps of Engineers' Dashields Locks and Dam, on the Ohio River in Allegheny County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Herbert C. Higginbotham, II, Department of Engineering and Construction, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219–2951, (412) 355–5902.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* August 16, 1993.

k. *Description of Project Action:* The license for this project, with a proposed capacity of 25 megawatts, was issued on October 8, 1984.The proposed project was to utilize the existing U.S. Corps of Engineers' Dashields Locks and Dam. The licensee states that it has not been able to secure the necessary agreements to allow the development of the project. No construction has occurred, and the proposed site remains unaltered.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

11. a. *Type of Application:* Surrender of License.

b. *Project No.:* 7909–027.

c. *Date filed:* June 14, 1993.

d. *Applicant:* Allegheny County, Pennsylvania.

e. *Name of Project:* Allegheny River Lock and Dam No. 4.

f. *Location:* U.S. Corps of Engineers' Allegheny River Lock and Dam No. 4, on the Allegheny River in Allegheny and Westmoreland Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Herbert C. Higginbotham, II, Department of Engineering and Construction, 501 County Office Building, 542 Forbes Avenue, Pittsburgh, PA 15219–2951, (412) 355–5902.

i. *FERC Contact:* Hank Ecton, (202) 219–2678.

j. *Comment Date:* August 16, 1993.

k. *Description of Project Action:* The license for this project, with a proposed capacity of 15 megawatts, was issued on May 13, 1985. The proposed project was to utilize the existing U.S. Corps of Engineers' Allegheny River Lock and Dam No. 4. The licensee states that it has not been able to secure the necessary agreements to allow the development of the project. No construction has occurred, and the proposed site remains unaltered.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

12. a. *Type of Application:* Surrender of License.

b. *Project No.:* 2515–001.

c. *Date filed:* June 30, 1993.

d. *Applicant:* Potomac Edison Company.

e. *Name of Project:* Harper's Ferry Hydro Station.

f. *Location:* Potomac River in Jefferson County, West Virginia, and Washington County, Maryland.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Allegheny Power System, Bulk Power Supply, *Attn:* William E. Costelnock, 800 Cabin Hill Drive, Greensburg, PA 15601–1689, (412) 838–6728.

i. *FERC Contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* September 1, 1993.

k. *Description of Project:* The principal project works consist of: (1) a 18-foot-high, 1700-foot-long log and stone dam; (2) a 4,500-foot-long headrace channel; (3) a powerhouse containing a generating unit with a rated capacity of 600 kW; (4) a tailrace; (5) a transmission line; and (6) appurtenant facilities.

The Licensee states that it does not intend to file an application for a new FERC license because of the high cost of operating and maintaining the project with little or no generation. Potomac Edison has reached an agreement in principle to convey all remaining rights and interests in the facility to the National Park Service.

l. This notice also consists of the following standard paragraphs: B & C1 and D2.

13. a. *Type of Application:* Transfer of License.

b. *Project No:* 6780–048.

c. *Date Filed:* July 6, 1993.

d. *Applicant:* Nugget Hydroelectric, L.P.

e. *Name of Project:* Deadwood Creek.

f. *Location:* On Deadwood Creek in Yuba County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John R. Roberts, Trustee (for Nugget Hydroelectric, L.P.), 419 Main Street, suite 300, Placerville, CA 95667, (916) 626–6441; Mr. Donn Wilson, Engineer-Administrator, Yuba County Water Agency, 1402 D Street, Marysville, CA 95901, (216) 741–6278.

i. *FERC Contact:* Diane M. Murray, (202) 219–2682.

j. *Comment Date:* August 31, 1993.

k. *Description of Transfer:* The transferor, as listed in paragraph (d), proposes to transfer the license issued on September 28, 1988, to the transferee to facilitate completion of the project. The transferee has proposed to complete and operate the project in accordance with the license. The transferee is a public agency organized pursuant to the Yuba County Water Act. In addition, the transferee is the licensee for the Yuba River Project (FERC Project No. 2246).

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

14. a. *Type of Application:* Exemption.

b. *Project No:* 11423–000.

c. *Date Filed:* July 8, 1993.

d. *Applicant:* Iris M. Anderson.

e. *Name of Project:* Woodcock Creek.

f. *Location:* On Woodcock Creek, in Clackamas County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joseph and Joan Lucero, 13525 SE Marsh Road, Sandy, OR 97055, (503) 668–5259.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Description of Project:* The project consists of: (1) An 11-foot-high existing diversion dam; (2) a 36-inch-diameter, 1,200-foot-long penstock; (3) a powerhouse containing a generating unit with a capacity of 77 kW and an average annual generation of 338,359 kWH; and (4) a short length of transmission line.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO) as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

**Standard Paragraphs**

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include and unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorized construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 13, 1993 for Project No. 2394–006). All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 26, 1993 for Project No. 2394–006).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (September 13, 1993 for Project Nos. 2444–002, 2475–006 and 2420–001.) All reply comments must be filed with the Commission within 105 days from the date of this notice. (October 26, 1993 for Project Nos. 2444–002, 2475–006 and 2420–001.)

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the

Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 16, 1993, Washington, DC.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17303 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. JD93–12546T Colorado–58]

## United States Department of the Interior; NGPA Notice Of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1992.

Take notice that on July 12, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Mesaverde Group Formation in the Ignacio Blanco-Masaverde Field East in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The recommended area encompasses approximately 2,240 acres and consists of all or portions of the following acreage.

Township 32 North, Range 8 West
Section 9: E/2
Township 33: North, Range 8 West
Section 33: All
Township 33 North, Range 9 West
Sections 22 and 25: All

The notice of determination also contains BLM's findings that the referenced portions of the Mesaverde Group meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17220 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. JD93–12547T Colorado–59]

## United States Department of the Interior; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1993.

Take notice that on July 12, 1993, the United States Department of Interior, Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Mesaverde Group Formation in the Igancio Blanco-Mesaverde Field within the Southern Ute Indian Reservation in La Plata County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The recommended area encompasses approximately 3,820.49 acres and consists of all or portions of the following acreage:

Township 32 North, Range 9 West
Section 3–4: S/2
Section 9: All
Section 10: S/2
Township 33 North, Range 9 West
Section 27–28: All
Section 33: All
Section 34: S/2

The notice of determination also contains BLM's findings that the referenced portions of the Mesaverde Group meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17221 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. JD93–12692T Oklahoma–43]

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

July 15, 1993.

Take notice that on July 13, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner Formation (also known as the Hart) and the Osborne Formation, underlying a portion of Canadian County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 21, 28, 29, 32 and 33, of Township 11 North, Range 7 West, Canadian County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17217 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. JD93–12693T Oklahoma–44]

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 15, 1993.

Take notice that on July 13, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner Formation (also known as the Hart), underlying a portion of Canadian County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 1 and 2 of Township 10 North, Range 7 West, Canadian County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the

requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17218 Filed 7-20-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. JD93-12694T Oklahoma-45]

## State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formations

July 15, 1993.

Take notice that on July 13, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner Formation (also known as the Hart) and the Osborne Formation, underlying portions of Canadian County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as section 6, 8, and 17 of Township 11 North, Range 7 West, Sections 1, 2, and 12 of Township 11 North, Range 8 West and Section 36, Township 12 North, Range 8 West, Canadian County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR §§ 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17219 Filed 7-20-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. CI93-12-000]

## Columbia Energy Services Corp.; Application for a Blanket Certificate With Pregranted Abandonment

July 15, 1993.

Take notice that on June 24, 1993, Columbia Energy Services Corporation (CES) of Building 200, suite 201, 2581 Washington Road, Pittsburgh, Pennsylvania 15241, filed with the Federal Energy Regulatory Commission (Commission) an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. CES requests that the authorization continue until such time as CES' pipeline affiliate, Columbia Gas Transmission Corporation, is found to be in compliance with Order No. 636. CES' application is on file with the Commission and open for public inspection.

To be heard or to protest the application a person must file a petition to intervene or a protest on or before August 5, 1993. A person filing a petition to intervene or a protest must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All petitions to intervene or protests must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make protestants parties to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a petition to intervene.

Under the procedure provided for here, unless otherwise advised, CES will not have to appear or be represented at any hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93-17224 Filed 7-20-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM93-5-24-000]

## Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

July 16, 1993.

Take notice that on July 14, 1993, Equitrans, Inc. (Equitrans), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 12, with a proposed effective date of August 1, 1993.

Equitrans states that the revisions to adjust Equitrans' demand surcharge for passthrough of take-or-pay surcharges from pipeline suppliers reflects the assessment by Tennessee Gas Pipeline Company (Tennessee) of an additional $69,301 in demand surcharges, including interest, related to Tennessee's take-or-pay buyout and buydown costs. Equitrans' FERC Gas Tariff (Original Volume No. 1, First Revised Sheet No. 177E) provides that any additional take-or-pay costs to Equitrans from Tennessee will be allocated to Equitrans' customers using the same methodology as such charges are allocated to Equitrans. On June 30, 1993, the Commission authorized Tennessee to recover a total of $3.27 million in additional take-or-pay demand costs using the same methodology which the Commission originally approved in Tennessee's Cosmic Settlement. As a result, Equitrans states it is increasing the total monthly demand surcharge for take-or-pay passthrough to $10,865.

Equitrans states that copies of the filing are being served on each of Equitrans' customers and interested state commissions and that copies of this filing are also available for public inspection during regular hours at Equitrans' offices in Pittsburgh, Pennsylvania.

Any person desiring to be heard or protest this application 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 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 23, 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 in the Public Reference Room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93-17304 Filed 7-20-93; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP93-154-000]

## Florida Gas Transmission Co.; Petition for Limited Waiver of Tariff Provision

July 16, 1993.

Take notice that on July 13, 1993, Florida Gas Transmission Company

(FGT), filed a petition for a limited waiver, to the extent necessary, of Commission policy and FGT's FERC Gas Tariff to permit the City of Gainesville, Florida d/b/a Gainesville Regional Utilities (GRU) to retain its existing priority date while adding a new delivery point to an existing firm transportation service agreement under which FGT is currently providing GRU service under Rate Schedule FTS–1.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same customer, GRU; (ii) the new delivery point will be located in the same geographic location as other existing delivery points at which FGT presently serves GRU; and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 23, 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 in the public reference room.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 93–17306 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. CP90–138–001]

## Mid Louisiana Gas Co.; Petition To Amend

July 15, 1993.

Take notice that on July 12, 1993, Mid Louisiana Gas Company (Mid Louisiana), 333 Clay Street, suite 2700, Houston, Texas 77002, filed in Docket No. CP90–138–001 a petition to amend its certificate pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate a different standby compressor unit in lieu of a unit previously authorized, all as more fully set forth in the application on file with the Commission and open to public inspection.

Mid Louisiana states that by order issued December 18, 1990, in Docket No. CP90–138–000 (53 FERC ¶ 61,393), the Commission authorized, *inter alia*, the construction of a new 1,150 horsepower, multi-stage compressor unit and related facilities at its DeSaird Station, Ouachita Parish, Louisiana. It is stated that the compressor would be used as backup for four existing compressors (2,725 horsepower total) at the station. Mid Louisiana further states that the Commission has granted extensions of time in which to install that compressor to permit new owners of Mid Louisiana, Interstate Natural Gas Company, the opportunity to correlate the compression requirements at the DeSaird Station with the operating conditions in the Monroe Field.

Mid Louisiana requests authorization to install an existing Chicago Pneumatic 6FE065 compressor (750 horsepower) in lieu of the new 1,150 horsepower unit. Mid Louisiana states that the existing unit would be relocated from its gathering system in the Monroe Field, where it is no longer in use. Mid Louisiana states that the relocated unit would provide reliable backup service at costs less than would have been incurred with the new unit. Mid Louisiana advises that the total cost of installing the existing unit, including relocation costs, would be approximately $400,000 rather than the original $1,000,000 which was estimated for the new 1,150 horsepower unit.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 5, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17222 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

## United Gas Pipe Line Co; Notice of Request Under Blanket Authorization

[Docket No. CP93–546–000]

July 15, 1993.

Take notice that on July 9, 1993, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–546–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new meter and related facilities at an existing meter station under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to install a 2-inch meter and appurtenant natural gas measurement equipment at an existing meter station known as the "Iowa Field Common Point," located in Jefferson Davis Parish, Louisiana. United advises that the meter will permit it to provide transportation service on behalf of United Gas Services Company (UGS) for delivery to Polaris Enterprises (Polaris). United states that the new facilities would enable UGS to deliver to Polaris 300 Mcf per day for lift gas to maintain field pressure. United explains that it would transport the gas for UGS under its blanket certificate in Docket No. CP88–6–000 and Rate Schedule ITS. It is estimated that the facilities would cost $18,347.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 93–17223 Filed 7–20–93; 8:45 am]

BILLING CODE 6717–01–M

## Office of Hearings and Appeals

### Cases Filed During the Week of May 21 Through May 28, 1993

During the Week of May 21 through May 28, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 14, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[During the Week of May 21 through May 28, 1993]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 05/10/93 | Arlene & Eunice Rude, Redfield, SD | RR272–105 | Request for Modification/ Recession in the Crude Oil Refund Proceeding. If granted: The April 15, 1993 Decision and Order (Case No. RC272–189) issued to Arlene & Eunice Rude regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified. |
| 05/24/93 | Albuquerque Journal, Santa Fe, NM | LFA–0299 | Appeal of an Information Request Denial. If granted: The May 13, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and the Albuquerque Journal would receive access to records responsive to the identities of all agencies that pay "reimburseables" to Sandia National Laboratories Systems Research Center. |
| 05/25/93 | Economic Regulatory Admin., Washington, DC. | LRZ–0020 | Motion to Dismiss. If granted: Louis Porter would be dismissed as the final party to the Proposed Remedial Order (Case No. HRO–0074) issued by the Economic Regulatory Administration to Dalco Petroleum Company, D. Warren Zang, and Louis Porter. As a result, the Proposed Remedial Order Proceeding would be closed. |

REFUND APPLICATIONS RECEIVED

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 05/11/93 thru 05/28/93 | Atlantic Richfield Refund Applications Received. | RF304–13987 thru RF304–14029 |
| 05/21/93 thru 05/28/93 | Texaco Oil Refund Applications Received. | RF321–19751 thru RF321–19761 |
| 05/21/93 thru 05/28/93 | Crude Oil Refund Applications Received. | RF272–94716 thru RF272–94724 |

REFUND APPLICATIONS RECEIVED—Continued

| Date received | Name of refund proceeding/ name of refund applicant | Case No. |
|---|---|---|
| 05/21/93 | Shaver Transportation Co. | RC272–199 |
| 05/27/93 | Link's Texaco ... | RF321–19758 |

[FR Doc. 93–17317 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–P

### Cases Filed During the Week of June 18 Through June 25, 1993

During the Week of June 18 through June 25, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 14, 1993.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[During the Week of June 18 through June 25, 1993]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| 6/21/93 | Shapiro, Fussell, Wedge & Smotherman, Atlanta, Georgia. | LFA–0306 | Appeal of an Information Request Denial. If granted: The June 7, 1993 Freedom of Information Request Denial issued by the Strategic Petroleum Reserve Project Management Office would be rescinded, and Shapiro, Fussell, Wedge & Smotherman would receive the document entitled, "Analysis and Recommendations for Final Settlement." |
| 6/23/93 | Arco/Cousins Arco, Atlantic Beach, Florida | RR304–64 | Request for Modification/Rescission in the Arco Refund Proceeding. If granted: The February 10, 1993 Dismissal Letter (Case No. RF304–12901) issued to Cousins Arco would be modified regarding the firm's application for refund submitted in the Arco refund proceeding. |
| 6/25/93 | Energy Products, Inc., Sacramento, California. | LFA–0307 | Appeal of an Information Request Denial. If granted: The June 14, 1993 Freedom of Information Request Denial issued by the Office of Building Energy Research of the Division of Energy Efficiency and Renewable Energy would be rescinded, and Energy Products, Inc. would receive access to the Oak Ridge National Laboratory Report, entitled "Preliminary Evaluation of Radiation Control Coatings for Energy Conservation in Buildings." |

REFUND APPLICATIONS RECEIVED

[During the Week of June 18 Through June 25, 1993]

| Date Received | Name of refund proceeding/Name of refund applicant | Case No. |
|---|---|---|
| 6/21/93 | Chucks Clark Super 100. | RF342–323. |
| 6/25/93 | Van M. Watkins. | RC272–205. |
| 6/18/93 thru 6/25/93 | Atlantic Richfield Applications Received. | RF304–14110 thru RF304–14162. |
| 6/18/93 thru 6/25/93 | Crude Oil Refund Applications Received. | RF272–94757 thru RF272–94768. |
| 6/18/93 thru 6/25/93 | Texaco Oil Refund Applications Received. | RF321–19776 thru RF321–19782. |

[FR Doc. 93–17318 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–P

## Cases Filed During the Week of June 25 Through July 2, 1993

During the Week of June 25 through July 2, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 14, 1993.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

| Date received | Name of firm | Case no. |
|---|---|---|
| 6/23/93 | Adolph's Texaco. | RF321–19787 |
| 6/23/93 | Thompson's Gulf #2. | RF321–21746 |
| 6/25/93 thru 7/2/93. | Atlantic Richfield Applications Received. | RF304–14163 thru RF304–14182 |
| 6/25/93 thru 7/2/93. | Crude Oil Refund Applications Received. | RF272–94769 thru RF272–94780 |
| 6/25/93 thru 7/2/93. | Beacon Oil Refund Applications Received. | RF238–93 thru RF238–112 |
| 6/28/93 | Brown Transport Corporation. | RF351–2 |
| 6/28/93 | Bougher Bros. & Son Texaco. | RF321–19783 |
| 6/28/93 | North Lake Texaco. | RF321–19784 |
| 6/28/93 | Chiaro's Texaco... | RF321–19785 |
| 6/28/93 | Ed Knowles Texaco. | RF321–19786 |
| 6/29/93 | Bishop Texaco Sales. | RF321–19790 |

[FR Doc. 93–17319 Filed 7–20–93; 8:45 am]

BILLING CODE 6450–01–P

## Final Filing Deadline in Special Refund Proceeding No. KEF–0102 Involving Agway, Inc.

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of setting final deadline for filing Applications for Refund in Special Refund Proceeding KEF–0102, Agway, Inc.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) has set the final deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and Agway, Inc. (Agway), Special Refund Proceeding No. KEF–0102. The previous deadline was September 26, 1990. The new final deadline is July 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8018.

**SUPPLEMENTARY INFORMATION:** On June 21, 1990, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth the final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and Agway, Inc. *Agway, Inc.*, 20 DOE ¶ 85,439 (1990), 55 FR 26492 (June 28, 1990). That Decision established September 26, 1990, as the

filing deadline for the submission of refund applications for direct restitution by purchasers of Agway's refined petroleum products. 20 DOE at 89,027, 55 FR 26497.

We commenced accepting refund applications in the Agway refund proceeding on June 21, 1990, more than three years ago. While the initial deadline for such submissions was September 26, 1990, we have continued to liberally accept applications after the deadline. However, we have now concluded that eligible applicants have been provided with more than ample time to file. Therefore, we will not accept applications that are postmarked after July 26, 1993. All Applications for Refund from the Agway Consent Order fund postmarked after the final filing date of July 26, 1993, will be summarily dismissed. Any unclaimed funds remaining after all pending claims are resolved will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: July 14, 1993.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

[FR Doc. 93-17320 Filed 7-20-93; 8:45 am]

BILLING CODE 6450-01-P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Use of Alternative Dispute Resolution and Negotiated Rulemaking Procedures

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Administrative Dispute Resolution Act (ADRA) Public Law 101-552, codified at 5 U.S.C. 571-583 (1992) and the Negotiated Rulemaking Act (Reg-Neg), Public Law 101-648, 5 U.S.C. 561-570 (1992), encourage agencies to use alternative means of dispute resolution in administrative programs and negotiated rulemaking for prompter and more informal resolution of disputes and development of regulations. The Commission anticipates that alternative dispute resolution and negotiated rulemaking in some areas of its responsibility may be faster, less contentious and more economical than current procedures.

Pursuant to section 3(a) of the ADRA, the Commission intends to adopt a policy statement that addresses the use of "alternative means of dispute resolution and case management in the following areas: (1) formal and informal adjudications, (2) rulemakings, (3) enforcement actions, (4) contract administration, and (5) litigation brought by or against the Commission.

Before adopting any such policy statement, however, the Commission is seeking comments from the public on the use of alternative dispute resolutions in any of the above referenced areas at the Commission. The Commission encourages a broad range of comments, from whether ADR is appropriate in the functional areas noted to whether specific types of ADR are appropriate for specific functional areas. All comments received will be carefully considered before any such policy statement is drafted and finalized.

**DATES:** Comments are due by September 20, 1993.

**ADDRESSES:** Comments should be submitted to the Office of the Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507. Copies of comments submitted by the public will be available for review at the Commission's Library, room 6502, 1801 L Street, NW., Washington, D.C. between the hours of 9:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Associate Legal Counsel for Legal Services, at (202) 663-4640 or TDD (202) 663-7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** In 1990, Congress passed the Administrative Dispute Resolution Act (ADRA), Public Law 101-552, and the Negotiated Rulemaking Act, Public Law 101-648. The ADRA encourages federal agencies to use mediation, conciliation, arbitration, negotiated rulemaking and other consensual methods of dispute resolution for the prompt and informal resolution of issues of controversy relating to administrative programs. The Reg-Neg Act sets forth criteria for the use of negotiated rulemaking in appropriate circumstances. Section 3 of the ADRA requires each agency to adopt a policy regarding the use of alternative dispute resolution and case management in a number of areas, including: (1) formal and informal adjudications; (2) rulemakings; (3) enforcement actions; (4) contract administration; and (5) litigation brought by or against the agency.

In enacting the ADRA, Congress expressed concern that administrative proceedings have become too formal and lengthy, and asserted that alternative procedures may, in at least some instances, be faster, less contentious and more economical. ADR techniques, however, will not be appropriate in every situation; the statute indicates, for example, that ADR techniques should not be used for precedent setting cases, those where a formal record is essential and those bearing on significant policy questions.

The Reg-Neg Act amended the Administrative Procedure Act to establish a procedure for negotiating a proposed rule. In enacting the statute, Congress addressed concerns that traditional rulemaking procedures may discourage affected parties from communicating openly with each other and with federal agencies, and encourages them to assume extreme conflicting positions often resulting in costly and time-consuming litigation. While agencies have experimented with alternative techniques to avoid these consequences, the Reg-Neg statute codifies the negotiated rulemaking process.

In addition to the Administrative Dispute Resolution Act, both the Americans With Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. 12101 *et seq.*, and the Civil Rights Act of 1991, Public Law 102-166, 42 U.S.C. 1981 note, explicitly encourage the use of alternative means of dispute resolution where appropriate and to the extent authorized by law. Congress's encouragement and emphasis on the utilization of alternate dispute resolution mechanisms in the labor dispute area along with reported ADR successes are sure to move more employers toward attempting to resolve internal disputes before they are brought in court or into EEOC's administrative programs. This support also encourages EEOC to look toward additive and alternative systems to provide the best and quickest law enforcement service to the public. Therefore, in undertaking the responsibilities of enforcing its two new statutes, the Commission believes that alternatives to its current charge resolution processes must be considered.

Alternative dispute resolution is not a new concept for the Commission. Title VII of the Civil Rights Act of 1964 requires that the Commission conciliate every charge when it makes a determination that reasonable cause exists to believe that discrimination has occurred. In addition, the Commission has undertaken other activities in the past to promote early, negotiated settlement of charges of discrimination, as well as efforts to encourage

alternative methods of resolving its own internal disputes. A few of these previous activities are set forth below.

**Rapid Charge Processing**

In 1977, EEOC established a rapid charge process, emphasizing early, negotiated no-fault settlements between charging party and respondent, on a pilot basis in three model offices. This process was extended to all district offices in 1979. Under the rapid charge process, Commission staff conducted a limited preliminary investigation, then scheduled a fact finding conference with the charging party and the respondent in which EEOC served as moderator/advisor, encouraging the parties to reach a settlement. If a settlement was reached, a no-fault agreement was signed by the parties and EEOC. EEOC made no decision on the merits of the case. If no settlement was reached, EEOC used the preliminary evidence and evidence received at the conference to either close the case with a determination, or return it for further investigation and regular charge processing.

A 1981 report by the General Accounting Office (GAO) found that rapid charge processing had improved charge processing from what it had been, and that, in most instances, rapid charge processing could be effective. However, GAO believed that in some instances EEOC overemphasized negotiated settlements.

**Internal Complaint Resolution**

In 1985 and 1986, EEOC developed materials and case studies for its managers, emphasizing ways to avoid or quickly resolve EEO complaints through improved communications and other actions. Many Commission managers believed that EEO complaints filed against EEOC as employer were due to poor communication between managers and employees, misunderstandings and other barriers. Top managers believed that small problems that could have been resolved quickly often developed into larger, irreconcilable issues, as the parties' positions hardened during lengthy EEO proceedings.

The ADRA requires that agencies consider alternative dispute resolution methods as vehicles for avoiding protracted administrative procedures and litigation. In developing an ADR policy, EEOC intends to explore the use of such techniques to the extent, and only to the extent, that they can improve and enhance the fairness, effectiveness and efficiency of its actions. EEOC intends to consider implementing or expanding the use of ADR techniques wherever such informal dispute resolution methods have a likelihood of proving useful within the resources given to the Commission. The Commission has implemented pilot ADR procedures in several areas. In addition, the Commission believes that ADR is not appropriate in other areas. These areas are discussed below.

**Enforcement—Charge Resolution**

To study the potential impact of ADR in its enforcement and charge solution responsibilities, EEOC initiated a Pilot Mediation Program in four district offices in April 1993. In initiating this Pilot Program, the Commission sought to develop a permanent informal resolution system that will supplement, not replace, the current charge resolution system, be highly effective, and produce a greater number of amicable resolutions in a shorter time period, with a higher level of satisfaction than is achieved through existing procedures.

In the Pilot Mediation Program, professional mediators are mediating 75 cases in each of four district offices: Houston, New Orleans, Philadelphia and Washington, DC Mediation is being offered in selected cases alleging discrimination in discharge, discipline and terms and conditions of employment under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Class action and equal pay charges are not eligible for mediation in the Pilot. Mediation occurs only where both the charging party and the respondent have voluntarily agreed to the process. Either party can opt out of mediation at any time. If an agreement is not reached during a 60-day mediation period, the case will be referred back to EEOC to continue the normal investigative process. Any agreement reached in a mediation will have the same force as any settlement reached through EEOC. Such agreements are enforceable in court. The Pilot Mediation Program is slated for completion in August 1993. A thorough analysis of the Pilot Program will be conducted at the conclusion of the Program.

**ADA Training and Enforcement**

In addition to the Pilot Mediation Program, EEOC emphasized the use of ADR to help resolve disputes arising under the Americans with Disabilities Act in a one-week training program conducted for 400 representatives of the disability community, under an EEOC contract with the Disability Rights Education and Defense Fund. Participants were trained on ADA substantive requirements are alternative dispute resolution techniques. One hundred participants received additional training including intensive training on ADR techniques. These 100 persons serve as resources to EEOC field offices to help resolve EEOC complaints.

**Adjudications**

EEOC is considering an interim rule implementing sections 320 and 321 of the Civil Rights Act of 1991. Sections 320 and 321 provide for formal adjudication under the Administrative Procedure Act of complaints of discrimination brought by previously exempt state and local government employees and Presidential appointees. The interim rule would permit medication by EEOC mediators of each complaint before the formal hearing, and the Commission will request comments on the interim rule.

In addition, in its recent regulations governing the processing of complaints of discrimination brought by federal employees, 29 CFR part 1614, EEOC has provided for an automatic extension of the pre-complaint counseling period when a complainant agrees to participate in an agency's established alternative dispute resolution program. The Commission also encourages agencies' use of ADR procedures during the investigative phase of the federal sector complaints process. Agencies have expressed considerable interest in efforts to train a cadre of expert mediators within the government who could be used by other agencies as neutrals, and other joint efforts to improve handling of federal sector EEO complaints.

**Negotiated Rulemaking**

When created in 1964 by Title VII of the Civil Rights Act of 1964, the Commission did not have the authority to issue substantive, or legislative, rules. When the Commission received the authority to enforce the Age Discrimination in Employment Act (ADEA), and most recently with the passage of the Americans with Disabilities Act (ADA), the Commission was given authority to issue regulations that have the force and effect of law. In carrying out these regulatory functions, the Commission has considered and will continue to consider whether to use Reg-Neg.

**Contract Administration**

EEOC has been party to only two contract disputes in the last 5 years, both of which were settled prior to the institution of formal proceedings. The Disputes Clause of the contract requires that disagreements be raised informally before any formal action in taken. In

addition, the ADRA authorizes agencies to use ADR in the context of any particular dispute. The Commission would be free to consider ADR in the context of any specific dispute raised.

**Internal Complaint Procedures**

The Commission's Office of Equal Employment Opportunity conducted a six-month Alternative Complaint Resolution Program (ACRP) in 1991. Under this program, certain individuals who filed EEO complaints against EEOC as an employer were offered the option of participating in a 30-day mediation program as an alternative to the formal complaint process. The ACRP offered an expedited process, in which a neutral mediator conducted mediation and attempted to resolve the matter within 30 days. If agreement was reached by all parties, the formal complaint was withdrawn; if mediation was not successful in the 30-day period, the complaint returned to the investigative stage of the formal complaint process. The project used trained mediators from federal and local government agencies and a few EEOC attorneys with mediation training.

The Commission seeks comment on its use of ADR and negotiated rulemaking in all of its programs and activities. Particularly, the Commission seeks public comment on the following:

(1) The particular pilot programs and proposals noted above, and whether any parts of them should or should not be adopted generally,

(2) Other areas of EEOC's operations that might readily benefit from the use of ADR techniques,

(3) Any areas of the Commission's operations in which ADR techniques should be limited or not used at all, and

(4) Any other matter that will be of interest or assistance to the Commission in developing its policy.

EEOC will develop its ADR policy in full consultation with the Administrative Conference of the United States and the Federal Mediation and Conciliation Service as required by section 3(a) of the ADRA. To this end, the Commission has designated its Legal Counsel as its ADR Specialist. The Legal Counsel serves as liaison with ACUS and FMCS and as coordinator of EEOC's ADR implementation.

Signed at Washington, DC, this 14 day of July, 1993.

For the Commission.

**Tony E. Gallegos,**

*Chairman.*

[FR Doc. 93-17321 Filed 7-20-93; 8:45 am]

BILLING CODE 6570-06-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 14, 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) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

*OMB Number:* 3060-0470

*Title:* Computer III Remand Proceeding: Bell Operating Company Safeguards, and Tier 1 Local Exchange Company Safeguards (CC Docket No. 90-623) and Implementation of Further Cost Allocation Uniformity (Memorandum Opinion and Order)

*Action:* Revision of a currently approved collection

*Respondents:* Businesses or other for-profit

*Frequency of Response:* Annually, quarterly and on occasion reporting requirements

*Estimated Annual Burden:* 90 responses; 300 hours average burden per response; 27,000 hours total annual burden

*Needs and Uses:* Local exchange carriers (LECs) are required to file a revised cost allocation manual by November 1, 1993, pursuant to the requirements contained in the attached Memorandum Opinion and Order (MO&O) according to the procedural specifications issued in Responsible Accounting Officer Letter No. 19 (RAO Letter 19). Section 64.903(a) codifies the requirement that local exchange carriers with annual operating revenues of $100 million or more file a cost allocation manual. Section 64.903(b) requires that carriers update their cost allocation manuals at least quarterly, except that changes to the cost apportionment table and the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in the cost apportionment table must be quantified in $100,000 increments at the cost pool level. Section 64.904 codifies the independent auditor's certification requirement. The Commission strengthened the standard to be used by independent auditors in preparing their reports on carrier's cost allocation manual implementation and results by requiring that the independent auditors provide the same level of assurance in audits as they provide in a financial statement audit engagement. (Approved under OMB Control number 3060-0384). The cost allocation manuals should state that carriers have established sub-pools and should describe the sub-pools and the apportionment procedures used for the sub-pools. The Commission has also specified cost pools and allocators for ten part 32 accounts.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93-17213 Filed 7-20-93; 8:45 am]

BILLING CODE 6712-01-M

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[Report No. CL-93-121]

### Common Carrier Public Mobile Services Information; New Transmittal Sheet for Phase 2 Unserved Area Applications

July 15, 1993.

Attached is a copy of Form FCC 464-A, "Transmittal Sheet for Phase 2 Cellular Applications for Unserved Areas." Applicants should use the FCC Form 464-A as the cover page for all phase 2 cellular applications for unserved areas. After September 1, 1993 phase 2 cellular applications for unserved areas without the Form 464-A will be returned as unacceptable for filing. The January 1992 version of the FCC Form 464, "Transmittal Sheet for Cellular Applications for Unserved Areas" will continue to be used for phase 1 cellular applications for unserved areas.

Items 1 through 4 must be completed on the FCC Form 464-A. Item 3 should

list all markets in which the proposed service boundary extends and specify for each market number and block whether or not it is in the phase 2 category at the time the application is filed. In Item 4 the blocks for Date Signed, Type/Printed Name, Signature, and Type/Printed Title must be completed. Item 5 is optional.

You may obtain a limited number of copies of the FCC 464–A form in the Public Forms Self-Service Center, room L–17, 1919 M Street, NW., Washington, DC. Additional copies of the forms may be ordered by calling 202–632–FORM or by writing to: Federal Communications Commission, Forms Distribution Center, 2803 52nd Avenue, Hyattsville, MD 20781.

For further information contact Steve Markendorff at 202–653–5560.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 93–17212 Filed 7–20–93; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update Listing of Financial Institutions in Liquidation.

**SUMMARY:** The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in July 2, 1992 issue of the **Federal Register** (57 FR 29491). The following is a list of financial institutions which have been placed in liquidation since the May 20, 1993 publication (57 FR 29412).

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION, ALPHA LISTING (NAME)

| Insitution name, city/state | Date closed, region | ReNo |
|---|---|---|
| American Bank and Trust, San Jose, CA. | 06/18/93, San Francisco. | 4582 |

FEDERAL DEPOSIT INSURANCE CORPORATION, ACTIVE INSTITUTIONS IN LIQUIDATION, ALPHA LISTING (NAME)—Continued

| Insitution name, city/state | Date closed, region | ReNo |
|---|---|---|
| Banccentral Amarillo, Amarillo, TX. | 06/10/93, Dallas. | 4581 |
| Capital Bank of California, Los Angles, CA. | 06/18/93, San Francisco. | 4583 |
| Crown National Bank, Charlotte, NC. | 05/07/93, Chicago. | 4578 |
| New England Savings Bank, New London, CT. | 05/21/93, New York. | 4580 |
| Palos Verdes National Bank, Rolling Hill Estates, CA. | 05/20/93, San Francisco. | 4579 |
| Wilshire Center Bank, NA, Los Angeles, CA. | 05/06/93, San Francisco. | 4577 |
| Silverado Banking, Savings & Loan Association, Denver, CO. | 12/9/88, San Francisco. | 7590 |

Dated: July 16, 1993.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 93–17329 Filed 7–20–93; 8:45 am]

BILLING CODE 6714–01–M

## FEDERAL RESERVE SYSTEM

### Banc One Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 1993.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

*1. Banc One Corporation*, Columbus, Ohio, and Banc One Beta Corporation, Columbus, Ohio; to merge with Firstier Financial, Inc., Omaha, Nebraska, and thereby indirectly acquire Firstier Bank, N.A., Omaha, Omaha, Nebraska; Firstier Bank, N.A., Lincoln, Lincoln, Nebraska; Firstier Bank, N.A., Scottsbluff, Scottsbluff, Nebraska; Firstier Bank, N.A., Norfolk, Norfolk, Nebraska.

In connection with this application, Applicants also propose to acquire Firstier Mortgage Company, Omaha, Nebraska, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1); Firstier Insurance, Inc., Omaha, Nebraska, and thereby engage in the sale of credit-related insurance in connection with extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i); and Wyoming Trust & Management Co., Gillette, Wyoming, and thereby engage in providing trust and asset management services pursuant to § 225.25(b)(1) of the Board's Regulation Y.

*2. Banc One Corporation*, Columbus, Ohio, and Banc One Oklahoma Corporation, Oklahoma City, Oklahoma,

to merge with Central Banking Group, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Central Bank of Oklahoma City, Oklahoma City, Oklahoma, and Friendly Bank of Oklahoma City, Oklahoma City, Oklahoma.

In connection with this application, Applicants also propose to acquire Central Financial Life Insurance Company, Inc., Phoenix, Arizona, and thereby engage in the sale of credit-related insurance in connection with extensions of credit by affiliated banks pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Firstbank of Illinois Co.*, Springfield, Illinois; to acquire 100 percent of the voting shares of Colonial Bankshares, Inc., Des Peres, Missouri.

In connection with this application, Applicant also proposes to acquire Guido Insurance Agency, Des Peres, Missouri, and thereby engage in the sale of credit-related insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17278 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

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## Bank South Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Bank South Corporation*, Atlanta, Georgia; to engage *de novo* through its subsidiary, Bank South Securities Corporation, Atlanta, Georgia, in investment or financial advice pursuant to § 225.25(b)(4); securities brokerage pursuant to § 225.25(b)(15); and foreign exchange advisory and transactional services pursuant to § 225.25(b)(17); and arranging for commercial real estate financing pursuant to § 225.25(b)(14) of the Board's Regulation Y. These activities will be conducted throughout the State of Georgia.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17279 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

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## Ronald Edward Clampitt, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 10, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Ronald Edward Clampitt*, Odessa, Florida; to retain 13.83 percent; Claude Cornelius Focardi, Largo, Florida, to retain 24.95 percent; and John Benson Wier, Jr., Tierra Verde, Florida; to retain 14.82 percent of the voting shares of Pinellas Bancshares Corporation, St. Petersburg, Florida, and thereby indirectly acquire United Bank of Pinellas, St. Petersburg, Florida.

*2. Charlotte C. Weber and John C. Weber*, Ocala, Florida; together to acquire 12.92 percent of the voting shares of Independent Bancshares, Inc., Ocala, Florida, and thereby indirectly acquire Independent Bank of Ocala, Ocala, Florida.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. V. G. Schaffer Children's Trust & V.G. Schaffer Grandchildren's Trust*, Balaton, Minnesota; to acquire 76.8 percent of the voting shares of Balaton Agency, Inc., Balaton, Minnesota, and thereby indirectly acquire 21st Century Bank, Balaton, Minnesota.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

*1. Harlan Lambert*, Fort Stockton, Texas, to acquire 12.76 percent for a total of 28.94 percent; Jim Ivy, Fort Stockton, Texas, to acquire 12.76 percent for a total of 16.32 percent; Bently King, Fort Stockton, Texas, to acquire 12.76 percent for a total of 24.97 percent; Richard Morrow, Fort Stockton, Texas, to acquire 12.76 percent for a total of 13.80 percent; and Ernest Woodward, McCamey, Texas, to acquire 12.76 percent for a total of 15.97 percent of the voting shares of Pecos County Bancshares, Inc., Fort Stockton, Texas, and thereby indirectly acquire The Pecos County State Bank, Fort Stockton, Texas.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17280 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

**CSB Bancorp, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies**

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 13, 1993.

**A. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. CSB Bancorp, Inc.*, Walsh, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Colorado State Bank of Walsh, Walsh, Colorado.

*2. InterBank, Inc.*, Sayre, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Sayre, Sayre, Oklahoma.

**B. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. FNB Bancorp*, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Founders National Bank of Los Angeles, Los Angeles, California.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17281 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

**Saban, S.A., Marina Bay, Gibraltar; RNYC Holdings Limited, Marina Bay, Gibraltar; Republic New York Corporation, New York, New York; Application to Engage in Nonbanking Activities**

Saban, S.A., Marina Bay, Gibraltar, RNYC Holdings Limited, Marina Bay, Gibraltar; and Republic New York Corporation, New York, New York (Applicants), have applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, Republic New York Securities Corporation, New York, New York (Company), in the following securities-related activities:

(1) underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. §§ 24 and 336, including banker's acceptances and certificates of deposit (bank-eligible securities);

(2) underwriting and dealing in, to a limited extent, all types of debt and equity securities (bank-ineligible securities);

(3) acting as agent for issuers in the private placement of all types of debt and equity securities, including providing related advisory services;

(4) acting as broker or agent with respect to interest rate and currency swaps, caps, floors, collars, and swap-related products, including providing advice to institutional customers regarding such financial instruments; and

(5) engaging in options, futures, and options on futures transactions in bank-eligible securities and bank-ineligible securities for hedging purposes, as an incident to the proposed underwriting and dealing activities.

Company has previously received Board approval to engage in full-service brokerage activities, riskless principal activities, and other securities-related activities. *See Saban, S.A., et al.*, 78 Federal Reserve Bulletin 955 (1993).

Applicants also propose to transfer to Company all of the existing activities and business of another wholly owned subsidiary, Republic Clearing Corporation, New York, New York, a futures commission merchant (FCM) registered with the Commodity Futures Trading Commission, and thereby offer FCM services through Company. Applicants propose to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board has previously approved, by both order and regulation, underwriting and dealing in bank-eligible securities. *See, e.g.*, 12 CFR 225.25(b)(16); *United Bancorp*, 64 Federal Reserve Bulletin 222 (1978). Applicants have stated that they will conduct the proposed bank-eligible underwriting and dealing activities subject to the requirements and limitations of the Board's Regulation Y.

The Board also has previously approved, by order, underwriting and dealing in, to a limited extent, bank-ineligible securities. *See, e.g., Citicorp, et al.*, 73 Federal Reserve Bulletin 473 (1987) (1987 Section 20 Order), *aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *aff'd sub nom. Securities Industries Ass'n v. Board of*

*Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicants have stated that they will conduct the proposed underwriting and dealing activities in bank-ineligible securities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1987 Section 20 Order, and the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities. For this reason, Applicants contend that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

The Board also has previously approved, by order, the proposed private placement activities, and Applicant has stated that it will conduct the proposed private placement activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous orders. *See J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

The Board also has previously approved acting as broker or agent with respect to interest rate and currency swaps, caps, floors, collars, and swap-related products, including providing advice to institutional customers regarding such financial instruments. *See, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1991); *The Fuji Bank, Limited*, 76 Federal Reserve Bulletin 768 (1990); *The Sumitomo Bank, Limited*, 75 Federal Reserve Bulletin 582 (1989). Applicants propose to engage in these swap activities subject to the provisions and conditions established by the Board in its previous orders.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicants believe that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicants also believe that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicants believe that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than August 10, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, July 15, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 93-17282 Filed 7-20-93; 8:45 am]

BILLING CODE 6210-01-F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Institute for Occupational Safety and Health

[Announcement Number 340]

### Cooperative Agreement for Occupational Safety and Health Applied Research in Occupational Lung Disease, Notice of Availability of Funds for Fiscal Year 1993

**INTRODUCTION:** The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), announces the availability of funds for fiscal year (FY) 1993 for a cooperative agreement in occupational lung disease.

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 to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering Healthy People 2000 see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

**Authority:** This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 [42 U.S.C. 241] and 317 (42 U.S.C. 247b) of the Public Health Service Act as amended.

**ELIGIBLE APPLICANTS:** Eligible applicants are nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, state and local health departments or their bona fide agents, and small, minority and/or women-owned businesses are eligible for this cooperative agreement.

**AVAILABILITY OF FUNDS:** Approximately $50,000 is available in FY 1993 to fund one cooperative agreement award. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**PURPOSE:** The purpose of this cooperative agreement is for the recipient organization to conduct a program of applied research in the area of occupational lung disease prevention. The program will consist of identification of applied research needs, formulation of a plan to respond to those needs, modification of the plan on the basis of ongoing program evaluation, and publication of research results. Specifically, this cooperative agreement is intended to involve research which will greatly influence prevention efforts for occupational lung diseases. Potential strategic research agendas may include asbestos, coal workers' pneumoconiosis, asthma, and silicosis.

**PROGRAM REQUIREMENTS:** In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC/NIOSH shall

be responsible for conducting activities under B., below:

*A. Recipient Activities*

1. Identify research needs relative to the occupational lung diseases in the selected program.

2. Develop a research protocol or protocols. Obtain peer review of the protocol and revise and finalize as required for approval.

3. Where appropriate, collaborate with NIOSH scientists who are working in complementary research areas.

4. Collaborate with NIOSH and other CDC staff in reporting and disseminating research results and relevant occupational safety and health information to appropriate safety and health constituents.

*B. CDC/NIOSH Activities*

1. Provide technical assistance through site visits and correspondence in the areas of program development, implementation, maintenance, review and priority setting related to the cooperative agreement.

2. Engage in scientific collaboration in research areas of mutual interest and investigation for appropriate aspects of the program.

3. Assist in the reporting and dissemination of research results to appropriate Federal, state, and local agencies, health care providers, and the scientific community.

**EVALUATION CRITERIA:** Applications will be reviewed and evaluated according to the following criteria:

1. Responsiveness to the objectives of the cooperative agreement, including the applicant's understanding of the objectives of the proposed cooperative agreement, and the relevance of the proposal to the objectives. (20%)

2. Feasibility of meeting the proposed goals of the cooperative agreement, including the proposed schedule for initiating and accomplishing each of the activities of the cooperative agreement, and a proposed method for evaluating the accomplishments. (20%)

3. Strength of the program design in addressing the needs in occupational lung disease research and the specificity with which the applicant's proposal addresses the prevention of occupational lung disease (i.e., organizational structure includes personnel whose research efforts focus on study and prevention of occupational lung disease). (20%)

4. The extent to which the institution has a program of recognized, documented expertise in the area of occupational lung disease research (i.e., published journal literature and recommendations of significant importance and application to industry and the workplace). (20%)

5. Training and experience of proposed Principal Investigator and staff, including a Principal Investigator who is a recognized scientist and technical expert and staff with training or experience sufficient to accomplish proposed program. (10%)

6. Efficiency of resources and uniqueness of program including the efficient use of existing and proposed personnel with assurance of a major time commitment of the Program Director to the program. Evidence of partnership with outside organization (i.e., universities or medical care providers) using shared resources toward common goals and the demonstrated ability to solicit and receive financial resources from outside the applicant's organization. (10%)

7. The extent to which the program budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not Scored)

**EXECUTIVE ORDER 12372:** Applications are not subject to the review requirements of Executive Order 12372, Intergovernmental Review of Federal Programs.

**PUBLIC HEALTH SYSTEM REPORTING REQUIREMENTS:** This program is not subject to the Public Health System Reporting Requirements.

**CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER (CFDA):** The Catalog of Federal Domestic Assistance Number (CFDA) for this program is 93.262.

## OTHER REQUIREMENTS

*A. Human Subjects*

If the proposed research program involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the program will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

*B. Paperwork Reduction Act*

Programs that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**APPLICATION SUBMISSION AND DEADLINE:** The original and five copies of the application PHS Form 398 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E-13, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, on or before August 25, 1993.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

**WHERE TO OBTAIN ADDITIONAL INFORMATION:** To receive additional written information, call (404) 332-4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 340. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6814.

Programmatic technical assistance may be obtained from Gregory R. Wagner, M.D., Director, Division of Respiratory Disease Studies, NIOSH, Centers for Disease Control and Prevention (CDC), 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, telephone (304) 291-4474 or David D. Bayse, Ph.D., Assistant Director for Science, NIOSH, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639-3525.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report,

Stock No. 017-001-00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: July 13, 1993.

**Richard A. Lemen,**

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 93-17296 Filed 7-20-93; 8:45 am]

BILLING CODE 4160-19-P

## Food and Drug Administration

### Lasalocid-Containing Feed for Chukar Partridges; Availability of Data

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness data and an environmental assessment to be used in support of a new animal drug application (NADA) or supplemental NADA for a lasalocid sodium-containing Type A medicated article intended for further manufacturing into a Type C medicated feed for use in chukar partridges, for the prevention of coccidiosis caused by *Eimeria legionensis*. The data, contained in Public Master File (PMF) 5429, were compiled under Interregional Research Project No. 4 (IR-4), a national agricultural program for obtaining clearances for use of agricultural products for minor or special uses.

**ADDRESSES:** Submit NADA's or supplemental NADA's to the Document Control Unit (HFV-199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

**FOR FURTHER INFORMATION CONTACT:** Janis R. Messenheimer-Hatch, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8651.

**SUPPLEMENTARY INFORMATION:** The use of lasalocid sodium in chukar partridge feed is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug, lasalocid sodium is subject to section 512 of the act (21 U.S.C. 360b) which requires that its uses in chukar partridges be the subject of an approved NADA or supplemental NADA. Partridges are a minor species under § 514.1(d) (21 CFR 514.1(d)). The IR-4 Project, Northeastern Region, New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853-6401, has provided data and information that demonstrate safety and effectiveness to chukar partridges consuming lasalocid-containing feed for the prevention of coccidiosis caused by *Eimeria legionensis*. IR-4 has also provided an environmental assessment that adequately addresses the potential impacts due to use of the drug product.

The drug will be used to treat coccidiosis which is a disease of young birds (up to 8 weeks of age). The birds will not be released until at least 18 to 20 weeks of age. These conditions of use result in an inherent withdrawal of the drug from chukar partridges of at least 10 weeks after administration. Based on the characteristics of lasalocid sodium drug metabolism and the inherent withdrawal time under the labeled conditions of use, the agency has concluded that tissue residue depletion data were not necessary for satisfying human food safety concerns.

The data and information are contained in PMF 5429. Sponsors of NADA's or supplemental NADA's may, without further authorization, refer to the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to a reference to the PMF, animal drug labeling and other data needed for approval, such as information concerning manufacturing methods, facilities, and controls, data supporting extrapolation from a major species in which the drug is currently approved, or authorized reference to such data, and information addressing the potential environmental impacts (including occupational) of the manufacturing process.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of an application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. to 4 p.m., Monday through Friday.

Dated: July 14, 1993.

**Richard H. Teske,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 93-17211 Filed 7-20-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F-0260]

### Quantum Chemical Corp.; Withdrawal of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 2B4327) proposing that the food additive regulations be amended to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food-packaging materials.

**FOR FURTHER INFORMATION CONTACT:** Julius Smith, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of July 21, 1992 (57 FR 32227), FDA announced that a food additive petition (FAP 2B4327) had been filed by Quantum Chemical Corp., 11500 Northlake Dr., Cincinnati, OH 45249. The petition proposed that the food additive regulations be amended to provide for the safe use of propylene modified ethylene-*n*-butyl acrylate for use as a component in the manufacture of food-packaging materials. Quantum Chemical Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: July 12, 1993.

**Janice F. Oliver,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 93-17206 Filed 7-20-93; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

### Availability of a Draft Recovery Plan for Endangered Karst Invertebrates in Travis and Williamson Counties, TX for Review and Comment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability and public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces availability for public review of a draft recovery plan for seven karst invertebrates that occur in Travis and Williamson Counties, Texas: The Bee Creek Cave harvestman (*Texella reddelli*), Bone

Cave harvestman (*Texella reyesi*), Tooth Cave pseudoscorpion (*Tartarocreagris texana*), Tooth Cave spider (*Neoleptoneta myopica*), Tooth Cave ground beetle (*Rhadine persephone*), Kretschmarr Cave mold beetle (*Texamaurops reddelli*), and Coffin Cave mold beetle (*Batrisodes texanus*). These seven invertebrate species spend their entire lives underground in caves, sinkholes, and other "karsts" (underground openings such as fractures, cracks, and fissures) that form in Edwards limestones. Four of the karst invertebrate species (the Tooth Cave spider, Bee Creek Cave harvestman, Tooth Cave pseudoscorpion, and Kretschmarr Cave mold beetle) are restricted to Travis County, Texas, while the Coffin Cave mold beetle is found only in Williamson County, Texas. The Bone Cave harvestman and Tooth Cave ground beetle are found in both Travis and Williamson Counties. Almost all of the species' locations occur on private lands. The Service solicits review and comment from the public on this draft plan.

**DATES:** Comments on the draft recovery plan must be received on or before September 7, 1993 to receive consideration by the Service.

**ADDRESSES:** Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Austin Field Office, 611 E. Sixth Street, room 407, Austin, Texas 78701; or by telephone (512) 482–5436. Written comments and materials regarding the plan should be addressed to the State Administrator at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lisa O'Donnell, U.S. Fish and Wildlife Service Wildlife Biologist, telephone (512) 482–5436 or at the above address.

**SUPPLEMENTARY INFORMATION:**

## Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Five species (Bee Creek Cave harvestman, Tooth Cave pseudoscorpion, Tooth Cave spider, Tooth Cave ground beetle, and Kretschmarr Cave mold beetle) were listed as endangered on September 16, 1988 (53 FR 36029). A refinement of the taxonomy has expanded this group into seven distinct species. Because the bone Cave harvestman and Coffin Cave mold beetle were considered to be the same as the Bee Creek Cave harvestment and Kretschmarr Cave mold beetle, respectively, at the time of listing, and localities of these new species were included in the Final Rule, the species are also considered to be listed as endangered under the Endangered Species Act. A rule containing the taxonomic changes for the two new species is being published separately in the **Federal Register**.

These seven invertebrate species live in caves, sinkholes, and other "karsts" (underground openings such as fractures, cracks, and fissures) that form in Edwards limestones in Travis and Williamson Counties, Texas. These Karst invertebrate species are all threatened by land development activities in an area that is undergoing rapid urban expansion. Few localities where these species are known to occur are adequately protected. Land development activities promote the spread and/or increase of fire ant infestations, which also pose a threat to karst invertebrates.

The objective of the draft recovery plan for endangered karst invertebrates in Travis and Williamson Counties, Texas is downlisting (from endangered to threatened). The downlisting criteria are provided in the plan and call for protecting key areas, and functioning of the karst ecosystems in those areas, throughout the range of these species. Recovery efforts outlined in the draft plan focus on habitat protection, habitat management, control of threats, public education, and additional research on biological and ecological requirements of the species.

In some cases, continued human intervention to control the fire ant threat may be necessary. Without this intervention, the ability of the species to be self-sustaining within these karst ecosystems and prospects for complete recovery are uncertain. Thus, the objective of this recovery plan is downlisting. Since time required to downlist each species may vary, one or more species may be downlisted separately.

## Public Comments Solicited

The Service solicits written comments on the recovery plan described. Allasked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. comments received by the date specified above will be considered prior to approval of the plan.

## Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 12, 1993.

**John G. Rogers,**

*Regional Director, U.S. Fish and Wildlife Service.*

[FR Doc. 93–17251 Filed—7–20–93; 8:45 am]

BILLING CODE 4310–55–M

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## Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–779517

*Applicant:* Fossil Rim Wildlife Center, Glen Rose, Texas.

Applicant requests permit to import one captive-bred female maned wolf *(Chrysocyon brachyurus)* from Arax Zoo, Brazil, for enhancement of propagation.

PRT–779518

*Applicant:* Northern Michigan Wolf Sanctuary, Negavner, Michigan.

Applicant requests a permit to export six captive-bred wolves *(Canis lupus)* to Haliburton Forest & Wildlife Reserve Ltd., Haliburton, Ontario, Canada, for educational display.

PRT-780511

*Applicant:* University of Florida, Gainesville, FL.

Applicant requests a permit to import blood, bone, tissue and organ samples of green *(Chelonia mydas)* and hawksbill *(Eretmochelys imbricata)* sea turtles from Nicaragua for scientific research. Researchers will opportunistically collect samples from sea turtles legally harvested by the Miskito Indians of Nicaragua.

PRT-780698

*Applicant:* Sidney Wilhite, West Monroe, LA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd maintained by Mr. D.B. Pohl, "Teafountain", Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-780823

*Applicant:* Thomas Hunt, Foxboro, MA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus dorcas dorcas)* culled from the captive herd maintained by Mr. J. Theron, "Wonderboom, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-780520

*Applicant:* George Carden Circus, Springfield, MO.

The applicant requests a permit to purchase in interstate commerce a pair of wild caught Asian elephants *(Elephas maximus)* from Gary Johnson, Ferris, CA, for the purpose of conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX (703/358-2281).

Dated: July 15, 1993.

Susan Jacobsen,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 93-17250 Filed 7-20-93; 8:45 am]

BILLING CODE 4310-55-M

## Bureau of Land Management

[WO-610-03-4112-02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget Paperwork Reduction Project (1004-0135), Washington, DC 20503, telephone 202-395-7340.

*Title:* 43 CFR 3160—Onshore Oil and Gas Operations, Sundry Notices and Reports on Wells

*OMB Approval Number:* (1004-0135)

*Abstract:* Federal and Indian (except Osage) oil and gas operators and operating rights owners are required to retain and/or provide data so that proposed operations may be approved or compliance with granted approvals may be monitored.

*Bureau Form Numbers:* 3160-5.

*Frequency:* On occasion.

*Description of Respondents:* Operators and operating rights owners of Federal and Indian (except Osage) oil and gas leases.

*Estimated Completion Time:* 25 minutes.

*Annual Responses:* 34,000.

*Annual Burden Hours:* 14,166.

*Bureau Clearance Officer (Alternate):* Marsha A. Harley, 202-653-6105.

Dated: June 4, 1993.

Hillary A. Oden,

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 93-17197 Filed 7-20-93; 8:45 am]

BILLING CODE 4310-84-M

[WO-610-03-4113-02]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0132), Washington, DC 20503, telephone 202-395-7340.

*Title:* 43 CFR Part 3260, Geothermal Resources Operations.

*OMB Approval Number:* (1004-0132)

*Abstract:* Data submitted by geothermal lessees and operators issued for agency approval of specific and/or additional operations on a well and to report the completion and/or progress of such additional work.

*Bureau Form Numbers:* 3260-2, 3260-3, 3260-4, 3260-5.

*Frequency:* Nonrecurring, on occasion, and monthly.

*Description of Respondents:* Lessees and operators of Federal geothermal leases and Indian geothermal contracts subject to BLM oversight.

*Estimated Completion Time:* 2 hours.

*Annual Responses:* 760.

*Annual Burden Hours:* 1,700.

*Bureau Clearance Officer (Alternate):* Marsha A. Harley, 202-653-6105.

Dated: June 28, 1993.

Hillary A. Oden,

*Assistant Director, Energy and Mineral Resources.*

[FR Doc. 93-17198 Filed 7-20-93; 8:45 am]

BILLING CODE 4310-84-M

[AA820-00-4830-14]

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0109), Washington, DC 20503, telephone 202-395-7340.

*Title:* Payments in Lieu of Taxes, 43 CFR 1881

*OMB approval number:* 1004–0109
*Abstract:* The information requested is statutorily required to compute payments due units of local government under the Payments in Lieu of Taxes Act (31 U.S.C. 6901–6907). The Act requires that the Governor of each State furnish a statement as to the amounts paid to units of local government under 11 receipt sharing statutes in the prior fiscal year. CFDA Number 15.216.
*Bureau Form Number:* None
*Frequency:* Annually
*Description of Respondents:* States supplying Federal land payment information to the Bureau of Land Management
*Estimated completion time:* 20 hours
*Annual responses:* 50
*Annual burden hours:* 1,000
*Bureau Clearance Officer (Alternate):* Marsha A. Harley (202) 653–6105

Dated: June 23, 1993.

**Tom Allen,**

*Assistant Director—Management Services.*

[FR Doc. 93–17200 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–84–M

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[NV–050–93–4333–11 NV5–92–93]

## Nevada: Temporary Closure of Certain Public Lands in the Las Vegas District for Management of the 1993 "Gold Coast 300" Off-Highway Vehicle (OHV) Race

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Temporary closure of certain Public Lands in Clark County, Nevada, on and adjacent to the 1993 "Gold Coast 300" race course on August 7, 1993. Access will be limited to race officials, entrants, law-enforcement and emergency personnel, licensed permittee(s) and right-of-way grantees.

**SUPPLEMENTARY INFORMATION:** Certain public lands in the Las Vegas District, Clark County, Nevada will be temporarily closed to public access from 0001 hours, August 7, 1993, to 2359 hours, August 7, 1993, to protect persons, property, and public land resources on and adjacent to the Southern California Off Road Racing Enthusiasts SCORE, International, 1993 "Gold Coast 300 OHV race course. Spectators are restricted to the start/finish, and the area shown as the high speed test section, along the paved I–15 frontage road only

These temporary closures and restrictions are made pursuant to 43 CFR part 8364. The public lands to be closed or restricted are those lands adjacent to and including roads, trails and washes identified as the 1993 "Gold Coast 300" OHV race course

The following public lands restricted or closed are described as: The Hidden Valley area, T. 23 S., R. 61 E., all of sections 1 through 36; T 24 S., R. 61 E., all of sections 1 through 36. The Erie area, T. 24 S., R. 60 E., all of sections 1 through 36; T. 23 S., R. 60 E., all of section 36. The Jean area, T. 25 S., R. 59 E., all of sections 1 through 36. The Jean Lake area, T. 25 S., R. 60 E., all of sections 1 through 36; T. 25 S., R. 61 E., all of sections 1 through 36. The Roach Lake area, T., 26 S., R. 59 E., all of sections 1 through 36; T. 27 S., R. 59 E., all of sections 1 through 36. The Beer Bottle Pass area, T. 26 S., R. 60 E., all sections 1 through 36. The Lucy Grey area, T. 27 S., T. 60 E., all of sections 1 through 36.

The above legal land descriptions are for public lands within Clark County, Nevada. A map showing specific areas closed to public access is available from the following BLM office: the Las Vegas District Office, P.O. Box 26569, Las Vegas, Nevada 89126, (702) 647–5000. Any person who fails to comply with this closure order issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.7.

Dated: July 9, 1993.

**Gary Ryan,**

*Associate District Manager, Las Vegas District.*

[FR Doc. 93–17271 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–HC–M

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[CO–920–03–4120–03; COC 54558]

## Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 54558; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public hearing.

**SUMMARY:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, fair market value of federal coal to be offered. An application for coal lease was filed by Mountain Coal Company requesting the Bureau of Land Management offer for competitive lease 1011.64 acres of federal coal in Delta and Gunnison Counties, Colorado.

**DATES:** The public hearing will be held at 7 p.m., August 16, 1993. Written comments should be received no later than August 23, 1993.

**ADDRESSES:** The public hearing will be held in the Paonia Town Hall, Paonia Community Center Room, 214 Grand Avenue, Paonia, Colorado. Written comments should be addressed to the Bureau of Land Management, Uncompahgre Basin Resource Area Office, 2505 South Townsend Avenue, Montrose, Colorado 81401.

**FOR FURTHER INFORMATION CONTACT:** Allan Belt, Area Manager, Uncompahgre Basin Resource Area Office at the address above, or by telephone at (303) 249–0647.

**SUPPLEMENTARY INFORMATION:** Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on August 16, 1993, at 7 p.m., in the Paonia Town Hall, 214 Grand Avenue, Paonia, Colorado. An application for coal lease was filed by Mountain Coal Company requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 13 S., R. 90 W., 6th P.M.
Sec. 19, lots 15 to 18, inclusive;
Sec. 30, lots 7 and 8.
T. 13 S., R. 91 W., 6th P.M.
Sec. 23, S½S½NE¼, E½SE¼SW¼, and SE¼;
Sec. 24, S½S½NW¼, and S½;
Sec. 25, lots 1 to 4, inclusive;
Sec. 26, NE¼NE¼.

Containing 1011.64 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the August 16, 1993, public hearing should be received at the Uncompahgre Basin Resource Area Office prior to the close of business August 16, 1993. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the

coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.
2. The price that the mined coal would bring in the market place.
3. The cost of producing the coal.
4. The interest rate at which anticipated income streams would be discounted.
5. Deprication and other accounting factors.
6. The mining method or methods which would achieve maximum economic recovery of the coal.
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and
8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Uncompahgre Basin Resource Area Office at the above address prior to close of business on August 23, 1993. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Uncompahgre Basin Resource Area Office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado.

Dated: July 15, 1993.

**Richard D. Tate,**

*Chief, Mining Law and Solid Minerals Adjudication Section.*

[FR Doc. 93–17259 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–JB–M

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[OR–943–2300–02; GP3–295; OR–45815]

## Order Providing for Opening of Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action will open 1,080 acres of acquired land to surface entry, and 320 acres to mining and mineral leasing. The 760-acre balance has been and continues to be open to mining and mineral leasing.

**EFFECTIVE DATE:** August 26, 1993.

**FOR FURTHER INFORMATION CONTACT:** Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

**SUPPLEMENTARY INFORMATION:** 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described land was acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

**Willamette Meridian**

T. 32 S., R. 32¾ E.,
Sec. 23, W½;
Sec. 25, S½NW¼, SW¼, and W½SE¼;
Sec. 26, S½NE¼, NW¼, N½SE¼, and SE¼SE¼;
Sec. 35, E½NE¼.

The area described contains 1,080 acres in Harney County.

2. At 8:30 a.m., on August 26, 1993, the above described land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 26, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on August 26, 1993, the following described land will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

**Willamette Meridian**

T. 32 S., R. 32¾ E.,
Sec. 25, SW¼;
Sec. 26, S½NE¼ and N½SE¼.

The area described contains 320 acres in Harney County.

4. At 8:30 a.m., on August 26, 1993 the land described in paragraph 3 will be opened to applications and offers under the mineral leasing laws.

Dated: July 12, 1993.

**Champ C. Vaughan,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 93–17199 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–33–M

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[AZ–020–03–4210–04; AZA–27785]

## Modification of Notice of Realty Action, Exchange of Public and Private Lands in Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action, exchange of public and private lands.

**SUMMARY:** This notice extends the date that interested parties may submit comments to the Area Manager, Kingman Resource Area.

**DATES:** Comments must be submitted on or before August 20, 1993.

**ADDRESSES:** U.S. Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, AZ 86401.

**FOR FURTHER INFORMATION CONTACT:** Ken Drew, Area Manager, Kingman Resource Area, at (602) 757–3161.

**SUPPLEMENTARY INFORMATION:** On May 21, 1993, a Notice of Realty Action was published in the **Federal Register** in Vol. 58, No. 97, Page 29772, and a correction published in the **Federal Register** in Vol. 58, No. 111, Page 32749, on June 11, 1993. The 45-day comment period allowed in the notice, which ended July 5, 1993, is being extended to August 20, 1993. Interested parties may submit comments to the Area Manager, Kingman Resource Area, at the above address. In the absence of timely objections, the proposed exchange notice published on May 21, 1993 and corrected on June 11, 1993, shall become the final determination of the Department of the Interior.

Dated: July 15, 1993.

**G.L. Cheniae,**

*District Manager.*

[FR Doc. 93–17258 Filed 7–20–93; 8:45 am]

BILLING CODE 4310–02–M

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–650 (Preliminary)]

### Nitromethane From the People's Republic of China

**Determination**

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [2] or threatened with material injury [3] by reason of imports from the People's Republic of China of nitromethane, provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

**Background**

On May 24, 1993, a petition was filed with the Commission and the Department of Commerce by ANGUS Chemical Co., Buffalo Grove, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of nitromethane from the People's Republic of China. Accordingly, effective May 24, 1993, the Commission instituted antidumping investigation No. 731–TA–650 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 2, 1993 (58 FR 31415). The conference was held in Washington, DC, on June 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of nitromethane from the People's Republic of China.

[3] Chairman Newquist, Commissioner Rohr, and Commissioner Nuzum determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of nitromethane from the People's Republic of China.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 8, 1993. The views of the Commission are contained in USITC Publication 2661 (July 1993), entitled "Nitromethane from the People's Republic of China: Investigation No. 731–TA–650 (Preliminary)."

By order of the Commission.

Issued: July 14, 1993.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–17307 Filed 7–20–93; 8:45 am]

BILLING CODE 7020–02–P

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[Investigation No. 337–TA–354]

### Investigation

In the Matter of certain tape dispensers.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Institution of investigation pursuant to 19 U.S.C. 1337.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 14, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, Minnesota 55133. An amended complaint was filed on June 30, 1993. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain tape dispensers by reason of alleged infringement of U.S. Patent Des. 289,180, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**FOR FURTHER INFORMATION CONTACT:** Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

**AUTHORITY:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

**SCOPE OF INVESTIGATION:** Having considered the complaint, the U.S. International Trade Commission, on July 14, 1993, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tape dispensers by reason of alleged infringement of the claim of U.S. Patent Des. 289,180; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Minnesota Mining and Manufacturing Company 3M Center, St. Paul, Minnesota 55133.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Acurite Industries Corp., 2/F No. 221–223 Chung Hsiad E Rd Sec 3, Taipei, Taiwan

Fancy International (HK) Ltd., Rm 505–6B Harbour Crystal Ctr., 100 Granville Rd., Tsim Sha Tsui, Kowloon, Hong Kong

Charles Leonard, Inc., 79–11 Cooper Avenue, Glendale, New York 11385

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the

date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: July 15, 1993.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 93–17308 Filed 7–20–93; 8:45 am]

BILLING CODE 7020–02–P

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 32318]**

### Exemption; The Kansas City Southern Railway Company—Merger Exemption—the Graysonia, Nashville, and Ashdown Railroad Co.

The Kansas City Southern Railway Company (KCS) and its wholly owned subsidiary, The Graysonia, Nashville, and Ashdown Railroad Company (GN&A) have filed a notice of exemption to merge GN&A into KCS, with KCS as the surviving corporation. Under the agreement and plan of merger, KCS will assume all rights, obligations and business functions of its subsidiary. The merger can be consummated on or after July 2, 1993.[1]

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). The merger will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family. The purpose of the transaction is to eliminate duplicative recordkeeping, filing, and reporting requirements, and to render more efficient GN&A's current billing and car reporting processes.

To ensure that all employees who may be affected by the transaction are given the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Richard P. Bruening and Robert K. Dreiling, 114 West 11th St., Kansas City, MO 64105.

Decided: July 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 93–17309 Filed 7–20–93; 8:45 am]

BILLING CODE 7035–01–M

[1] The parties indicated that consummation was expected to occur on or after July 1, 1993. Under the class exemption invoked here, consummation may not occur until at least 1 week after the notice of exemption is filed. 49 CFR 1180.4(g)(1). This notice was filed with the Commission on June 25, 1993. Under 49 CFR 1104.7, when computing any period of time, the date of the act (filing) upon which the designated period of time begins to run is not included. This makes July 2, 1993 the earliest allowable consummation date.

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree In Action Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 6922, and Departmental policy, 28 CFR 50.7, notice is hereby given that on July 8, 1993, the United States Department of Justice, by the authority of the Attorney General and acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency, lodged a Consent Decree in *United States* v. *Allen-Bradely Co., et al.*, Civil Action No. S90–00593, with the United States District Court for the Northern District of Indiana. The Consent Decree addressees the liability of certain parties ("the Settling Defendants") under section 107 of CERCLA, 42 U.S.C. 9607, for certain response costs incurred by the United States at the Cam-Or site in Westville, La Porte County, Indiana. The Consent Decree requires the Settling Defendants to pay $2.66 million in reimbursement for past costs and prejudgment interest, as well as all of EPA's future oversight costs for completion of work at the site under a unilateral administrative order issued by EPA on September 18, 1989. The Settling Defendants also must pay interest on the sum $2.66 million accruing from July 1, 1992 (the date of the Settling Defendants' agreement in principle with the United States) to the date of payment.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Allen-Bradley Co., et al.*, DOJ Reference No. 90–11–3–609A.

The Consent Decree may be examined at the Region V Office of Regional Counsel, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Consent Decree Library, United States Department of Justice, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (20-2–624–0892). A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check for $4.50 (25 cents per page reproduction cost) payable to Consent Decree Library.

**Peter R. Steenland, Jr.,**

*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93–17195 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

### Lodging of Consent Decree; United States v. Allied Signal Inc., et al.

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that an amended complaint was filed on June 24, 1993, in *United States* v. *AlliedSignal Inc., et al.*, Civil Action No. H–91–3529, in the United States District Court for the Southern District of Texas, Houston Division, and, simultaneously, a Consent Decree between the United States and four parties was lodged with the court. This Consent Decree, along with three consent decrees earlier lodged on December 3, 1991 against 117 other parties, notice of which was published in the **Federal Register** on 12/19/91, Vol. 56, No. 244, p. 65913, settles the government's claims in the amended complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, for (1) injunctive relief to abate an imminent and substantial endangerment

to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility located near Hempstead, Waller County, Texas, and known as the "Sheridan Site," and for (2) recovery of all response costs incurred by the United States. The amended complaint alleged, among other things, that certain defendants were owners or operators of the facility at the time of disposal of hazardous substances at the Sheridan Site and that certain defendants were persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the Site or who arranged for transport of hazardous substances to the Site. The complaint further alleged that the United States has incurred response costs in response to actual or threatened releases of hazardous substances at or from the Sheridan Site.

Under the terms of the proposed consent decree, Darling-Delaware Corporation (on behalf of Pepper Rendering), AlliedSignal Inc., J.M. Huber Corporation, and Groendyke Transport agreed to pay $2.5 million towards the government's past response costs and future oversight costs. The $2.5 million dollar settlement, in conjunction with the three currently lodged consent decrees, fully compensates the United States for its costs, as well as funds and implements a remedy at the Site that includes bioremediation of sludges and contaminated soil, residue stabilization, installation of a RCRA compliant cap over the pond and dike area, installation of a flexible spur jetty to control erosion of the Brazos River bank, groundwater monitoring, decontamination of all on-site tanks and processing equipment, and treatment of storm water and wastewater before discharge into the Brazos River. The settlement also provides $20,000 for all costs incurred, and to be incurred, with regard to a wildlife mitigation plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *AlliedSignal Inc., et al.*, D.J. Ref. No. 90-11-2-445.

The proposed Consent Decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency:

*EPA Region VI*
Contact: Anne M. Foster, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2169

*United States Attorney's Office*
Assistant United States Attorney, Civil Division, The Lyric Center, 440 Louisiana, 9th Floor, Houston, Texas 77002, (713) 229-2600

Copies of the proposed Consent Decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the Decree, please enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Peter R. Steenland, Jr.,**
*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93-17266 Filed 7-20-93; 8:45 am]
BILLING CODE 4410-01-M

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## Lodging of Consent Decree Pursuant to the Clean Water Act; Stoeco Development, Ltd., et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent order in *Stoeco Development, Ltd., et al.* versus *Department of the Army Corps of Engineers* and *United States* versus *Stoeco Homes, Inc., et al.*, Civil Action No. 88-0054 (D.N.J.) was lodged with the United States District Court for the District of New Jersey on June 30, 1993.

The proposed consent order arises from consolidated lawsuits concerning the delineation of federally regulated wetlands and alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, as a result of the discharge of dredge and fill materials into certain areas claimed to be wetlands in Ocean City, New Jersey. One portion of the site claimed to be wetlands is owned by Stoeco Development, Ltd.; another portion of the site is owned by Stainton-Burrell Development, Ltd.; The Shore Memorial Hospital and The Pennington School have beneficial interests in the site. These parties (collectively, "Stoeco") built residential buildings, including the discharge of fill materials, on a portion of the site without authorization from the U.S. Army Corps of Engineers ("Corps") under 33 U.S.C. 1344. Stoeco brought suit to challenge the Corps' jurisdictional determination of wetlands on the site; the United States brought suit to seek relief for alleged violations of the Clean Water Act.

The consent order requires Stoeco to mitigate, enhance, and maintain wetlands on a portion of the site (Blocks 2505, 2605, 2606, 2705, 2706, 2805), and on an additional parcel (a portion of Block 3350), in accordance with a wetlands mitigation and enhancement plan to be prepared by an environmental consultant and approved by the Corps. The consent order also prohibits Stoeco from bringing any action for a government taking with regard to the site subject to this litigation. The consent order further provides that the Corps' Cease and Desist Order will be rescinded as to certain other portions of the site.

The Department of Justice will receive written comments relating to the consent order for a period of 30 days from the date of publication of this notice. Comments should be addressed to: Irene Dowdy, Assistant United States Attorney, 402 East State Street, room 502, Trenton, New Jersey 08608, and should refer to *Stoeco Development, Ltd.* versus *Department of the Army Corps of Engineers*, Civil Action No. 88-0054 (D.N.J.).

The consent order may be examined at the Clerk's Office, United States District Court, 401 Market Street, Camden, New Jersey 08101.

**Myles E. Flint,**
*Acting Assistant Attorney General, Environment and Natural Resources Division.*

[FR Doc. 93-17269 Filed 7-20-93; 8:45 am]
BILLING CODE 4410-01-M

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**[AAG/A Order No. 77-93]**

## Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Automated Data Processing Equipment Inventory Management System (AIMS), JUSTICE/INS-018, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of a proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its

review of the system. Therefore, please submit any comments by August 20, 1993. The public, OMB and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Room 850 WCTR, Washington, DC 20530.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: July 7, 1993.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

**JUSTICE/INS–018**

SYSTEM NAME:

Automated Data Processing Equipment Inventory Management System (AIMS).

SYSTEM LOCATION:

Headquarters, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS–999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

INS employees who are responsible for the procurement and management of automated data processing equipment (ADPE); and, contractors who have been assigned ADPE to use in developing software programs for INS.

CATEGORIES OF RECORDS IN THE SYSTEM:

An inventory reflecting (1) the ADPE procurement and management activities of INS employees and (2) the identity of contractors using such equipment to develop software programs for INS. The inventory will include information relating to the kinds and quantity of ADPE equipment procured, the disposition of such equipment and the purpose for such disposition, and/or (where appropriate) information relating to the reassignment of responsibility for the equipment. Such reassignment may be made based upon the resignation or transfer of responsible employees, upon the expiration of the subject contracts, or otherwise upon the need to track the status or disposition of the equipment and identify the management employee responsible therefor, e.g., removal of the equipment from the inventory for repair purposes. Records will include identifying information such as INS employee or contractor name/title, social security number, office location/address and phone number, company name of the contractor, and other relevant information such as the level of responsibility assigned to the INS employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103 and 40 U.S.C. 483.

PURPOSE(S):

To provide accountability records relating to (1) INS employee management and disposition of ADPE equipment and (2) contractor use of such equipment in developing software programs for INS. The records will be used by management to track and account for the procurement and disposition of all ADPE, and thus ensure the integrity and security of the ADPE inventory.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. Where there is an indication of a violation or potential violation of law (whether civil, criminal, or regulatory in nature), to the appropriate agency (whether Federal, State, local or foreign) charged with the responsibility of investigating or prosecuting such violations, or charged with enforcing or implementing the statute and/or the rule, regulation or order issued pursuant thereto.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To the new media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are stored in a data base on magnetic disk.

RETRIEVABILITY:

These records may be retrieved by INS employee and contractor name, social security number, company name, or office location.

SAFEGUARDS:

The records are accessed from mainframe computer terminals located in INS offices that are locked during non-duty hours. Access is obtained through terminals which require the use of restricted passwords and user identification numbers. Only designated property management officers and their supervisors have access to AIMS for creating and updating ADPE Inventory records within their jurisdiction.

RETENTION AND DISPOSAL:

A schedule for the retention and disposal of these records is under review and development.

SYSTEM MANAGER AND ADDRESS:

The Servicewide system manager is the Director, Technical Services Branch, Data Systems Division, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/Privacy Act (FOIA/PA) Officer at the address identified above. Clearly mark the envelope and letter "Privacy Act Request." Provide the full name, social security number, user identification number, and notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the FOIA/PA Officer at the address identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Privacy Act Request." The record must be identified in the same manner as described for making a request for access.

RECORD SOURCE CATEGORIES:

The individuals covered by the system are the record sources.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93–17196 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–10–M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Glycols Joint Venture

Notice is hereby given that, on June 25, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Amrep Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership to the Glycols Joint Venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notification stated the addition of Blue Coral, Inc., Cleveland, OH to the venture.

No other changes have been made in either the membership or planned activity of the venture. Membership in this venture remains open, and the parties intend to file additional written notification disclosing all changes in membership.

On May 16, 1991, Amrep Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 6, 1991 (56 FR 26162).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–17193 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

### Notice Pursuant to the National Cooperative Research Act of 1984—Bell Communications Research, Inc.

Notice is hereby given that, on May 25, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. § 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") and the other parties to the ANSA Sponsorship Agreement ("ANSA"), identified below, have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; BNR Europe Limited, Essex, United Kingdom; British Telecommunications, plc, London, United Kingdom; Digital Equipment International B.V., Nijmegen, Netherlands; Marconi Instruments Limited, Middlesex, United Kingdom; GPT Limited, West Midlands, United Kingdom; Hewlett-Packard Limited, Bristol, United Kingdom; International Computers Limited, London, United Kingdom; Open Connexion Pty. Limited, Melbourne, Australia; and France Telecom-Centre National D'Etudes Des Telecommunications, Issy-les-Moulineaux Cedex, France. Bellcore and the other parties identified above entered into an agreement effective as of December 8, 1992 to engage in cooperative activity to explore and research technologies for open distributed computing including the use of such technologies over telecommunications facilities for exchange and exchange access services.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 93–17194 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

### Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 18, 1993, Abbott Laboratories, 14th Street & Sheridan Road, Attn: Customer Service D–345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Dextropropoxyphene, bulk (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

Dated: July 12, 1993.

**Gene R. Haislip,**

*Director, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93–17293 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–09–M

### Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 3, 1993, Applied Science Labs, Division of Alltech Associates Inc., 2701 Carolean Industrial Drive, P.O. 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N,N-Dimethylamphetamine (1480). | I |
| 4-Methylaminorex (cis isomer) (1590). | I |
| Lysergic acid diethylamide (7315). | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3, 4-Methylenedioxyamphetamine (7400). | I |
| N-Hydroxy-3, 4-methylenedioxyamphetamine (7402). | I |
| 3, 4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3, 4-Methylenedioxymethamphetamine (7405). | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| N-Ethyl-1-phenylcyclohexylamine (7455). | I |
| 1-(1-Phenylcyclohexyl) pyrrolidine (7458). | I |
| 1-[1-(2-Thienyl) cyclohexyl] piperidine (7470). | I |
| Dihydromorphine (9145) | I |
| Normorphine (9313) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| 1-Piperidinocyclohexane-carbonitrile (8603). | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |
| Oxymorphone (9652) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the

issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

Dated: July 12, 1993.

**Gene R. Haislip,**

*Director, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93-17294 Filed 7-20-93; 8:45 am]

BILLING CODE 4410-09-M

## Manufacturer of Controlled Substances; Application

Pursuant to section 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 2, 1993, Dupont Pharmaceuticals, The Dupont Merck Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Oxymorphone (9652) | II |

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

Dated: July 12, 1993.

**Gene R. Haislip,**

*Director, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93-17292 Filed 7-20-93; 8:45 am]

BILLING CODE 4410-09-M

## Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 24, 1993, Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Colorado 80924, made application to the Drug Enforcement Administration to be registered as an importer of Carfentanil (9743) a basic class of controlled substance Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 20, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 12, 1993.

**Gene R. Hailslip, Director,**

*Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 93-17295 Filed 7-20-93; 8:45 am]

BILLING CODE 4410-09-M

# NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

## Application and Opportunity To Request Information Meeting

**ACTION:** Notice of application and opportunity to request an informational meeting.

**SUMMARY:** The National Archives and Records Administration gives notice that an application has been filed with the Maryland Department of the Environment to install four natural gas/no. 2 oil fired boilers at the National Archives at College Park (Archives II), Maryland.

**FOR FURTHER INFORMATION CONTACT:** The Maryland Department of the Environment at 401-631-3230, or Marvin Shenkler of NARA at 301-713-6500.

**SUPPLEMENTARY INFORMATION:** The National Archives and Records Administration (NARA) has submitted to the Maryland Department of the Environment, Air and Radiation Management Administration (the Department) an application for a Permit to Construct to install four natural gas/no. 2 oil fired boilers rated at 16.7 million BTU/hour at the National Archives at College Park (Archives II). The plant will be located at 8601 Adelphi Road, Adelphi, Maryland, Prince George's County.

Copies of the application and other supporting documents, Docket #26-93, are available for public inspection at the following locations during normal business hours: Maryland Department of the Environment, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224, or, Prince George's County Public Library, Hyattsville Branch, 6530 Adelphi Road, Hyattsville, MD 20782.

Interested persons may request an informational meeting. Requests for an informational meeting must be submitted in writing and must be received by the Department no later than 10 days from the date of this notice. All requests for an informational meeting should be directed to the attention of Ms. Caryn Coyle, Office of the Director, Air and Radiation Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

Dated: July 14, 1993.

**James C. Megronigle,**

*Assistant Archivist for Management and Administration.*

[FR Doc. 93-17275 Filed 7-20-93; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by August 25, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 21, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202-682-5401).

**SUPPLEMENTARY INFORMATION:** The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* Automated Panel Bank System Data Collection Form.

*Frequency of Collection:* Triennially.

*Respondents:* Individuals wishing to be considered for panel service.

*Use:* The form is used to collect basic information from qualified individuals who have recommended for panel service. Information is entered into a computer database which serves as a reference tool for Endowment staff to aid in assembling advisory panels which meet Congressional requirements for broad representation.

*Estimated Number of Respondents:* 1,000.

*Average Burden Hours Per Response:* .5.

*Total Estimated Burden:* 500.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 93-17079 Filed 7-20-93; 8:45 am]

BILLING CODE 7537-01-M

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Comments on this information collection must be submitted by August 20, 1993.

**ADDRESSES:** Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202-682-5401).

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington DC 20506; (202-682-5401).

**SUPPLEMENTARY INFORMATION:** The Endowment request the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

*Title:* FY 95 Music Fellowship Application Guidelines.

*Frequency of Collection:* One-time.

*Respondents:* Individuals.

*Use:* Guideline instructions and applications elicit relevant information from individual musicians who apply in the Music Program. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the review process.

*Estimated Number of Respondents:* 730.

*Average Burden Hours Per Response:* 20.

*Total Estimated Burden:* 14,600.

**Judith E. O'Brien,**

*Management Analyst, Administrative Services Division, National Endowment for the Arts.*

[FR Doc. 93-17080 Filed 7-20-93; 8:45 am]

BILLING CODE 7537-01-M

### National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on August 6-7, 1993, from 9 a.m. to 5:30 p.m. on August 6, 1993 and from 9 a.m. to 2:30 p.m. on August 7, 1993, in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public. Topics for discussion will include opening remarks; Legislative update; reports from the Arts Education Advisory Council Steering Group and NASSA; Cultural Diversity Task Force Update; FY 95 Budget; and Program Review and/or Guidelines and/or Application Review for Local Arts Agencies, Theater, Museum, Dance on Tour, Presenting and Commissioning-Artists' Projects Regional Initiatives, Music-Fellowships, International, Dance, Design Arts, Expansion Arts, Folk Arts, Literature, Media Arts, and Visual Arts.

If, in the course of application discussion review, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about

individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682/5532, TYY 202/682–5496, at least seven (7) days prior to the meeting. Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 15, 1993.

**Yvonne M. Sabine,**

*Director, Office of Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17284 Filed 7–20–93; 8:45 am]

BILLING CODE 7537–01–M

## National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Music Section) to the National Council on the Arts will be held on August 11–12, 1993 from 9 a.m. to 5:30 p.m. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 11, 1993, from 9 a.m. to 10:15 a.m. for introductions.

The remaining portion of this meeting from 10:15 a.m. to 5:30 p.m. on August 11, 1993 and from 9 a.m. to 5:30 p.m. on August 12, 1993, is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the descretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: July 15, 1993.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17286 Filed 7–20–93; 8:45 am]

BILLING CODE 7537–01–M

## National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Music Presenters B Section) to the National Council on the Arts will be held on from 9 a.m. to 6:30 p.m. on August 10, 1993, and from 8:30 a.m. to 6:30 p.m. on August 11–13, 1993. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of these meetings will be open to the public from 8:30 a.m. to 9 a.m. on August 11–13, 1993, and from 4 p.m. to 6:30 p.m. on August 13, 1993. Topics of discussion will include policy and guidelines.

The remaining portions of these meetings from 9 a.m. to 6:30 p.m., on August 10–12, 1993, and 9 a.m. to 4 p.m. on August 13, 1993, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5439.

Dated: July 13, 1993.

**Yvonne M. Sabine,**

*Director, Panel Operations, National Endowment for the Arts.*

[FR Doc. 93–17285 Filed 7–20–93; 8:45 am]

BILLING CODE 7537–01–M

# NATIONAL SCIENCE FOUNDATION

## Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting a notice of information collection that will affect the public. Interested persons are invited to submit comments by August 20, 1993. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335. Copies of materials may be obtained at the above address or telephone. Comments may also be submitted to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

*Title:* Survey of Scientific and Engineering Expenditures at Universities and Colleges, FY 1993, FY 1994, and FY 1995.

*Affected Public:* Non-profit institutions.

*Respondents/Reporting Burden:* 525 respondents, 16 hours per response.

*Abstract:* This survey provides academic R&D expenditures data by source and discipline, including research equipment. Data are used for planning and policy formulation related to academic science and engineering infrastructure. Users

include Congress, Federal agencies, States, industry, universities, etc. Affected public-higher education and associated federally funded R&D centers.

Dated: July 15, 1993.

**Herman G. Fleming,**

*Reports Clearance Officer.*

[FR Doc. 93-17215 Filed 7-20-93; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Proposed Generic Communication; Long-Term Solutions and Upgrade of Interim Corrective Actions for Thermal-Hydraulic Instabilities in Boiling Water Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter. A generic letter is an NRC document that (1) requests licensees to submit analyses or descriptions of proposed corrective actions, or both, regarding matters of safety, safeguards, or environmental significance, or (2) requests licensees to submit information to the NRC on other technical or administrative matters, or, (3) transmits information to licensees regarding approved changes to rules or regulations, the issuance of reports or evaluations of interest to the industry, or changes to NRC administrative procedures.

This generic letter requests each BWR holder of an operating license (except for Big Rock Point which does not have capability for operation at reduced flow conditions) (1) take the appropriate actions to augment its respective procedures and training for preventing thermal-hydraulic instabilities in its reactor and (2) submit to the NRC a plan describing the long-term stability solution option it has selected and the implementation schedule it proposes for the modification of plant protection system to ensure compliance with General Design Criteria 10 and 12 in appendix A to part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50). The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. This proposed generic letter and supporting documentation were discussed in meeting number 240 of the Committee to Review Generic Requirements (CRGR). The relevant information that was sent to the CRGR to support their review of the proposed generic letter is available in the Public Document Rooms under accession number 9307140002. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of the technical position and, when appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

**DATES:** Comment period expires August 20, 1993. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington DC.

**FOR FURTHER INFORMATION CONTACT:** Larry Phillips (301) 504-3232.

**SUPPLEMENTARY INFORMATION:** The proposed generic letter text is given in its entirety below.

**To: All Holders of Operating Licenses for Boiling Water Reactors (BWRs)**

**Subject: Long-Term Solutions and Upgrade of Interim Corrective Actions for Thermal-Hydraulic Instabilities in Boiling Water Reactors**

*Purpose*

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to request that each addressee (1) take the appropriate actions to augment its respective procedures and training for preventing thermal-hydraulic instabilities in its reactor and (2) submit to the NRC a plan describing the long-term stability solution option it has selected and the implementation schedule it proposes for the modification of plant protection systems to ensure compliance with General Design Criteria (GDC) 10 and 12 in appendix A to part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50).

*Background*

The possibility of power oscillations due to thermal-hydraulic instabilities in boiling water reactors (BWRs) and the consequences of such events have been of concern for many years. The staff evaluated thermal-hydraulic stability as Generic Issue B-19 and recommended closure actions for resolution in Generic Letter 86-02, "Long-Term Solutions to Thermal-Hydraulic Instabilities in Boiling Water Reactors," which requested licensees to examine each core reload and to impose operating limitations, as appropriate, to ensure compliance with GDC 10 and 12. GDC 10 requires that the reactor core be designed with a appropriate margin to assure that specified fuel design limits will not be exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. GDC 12 requires assurance that power oscillations which can result in conditions exceeding specified acceptable fuel design limits are either not possible or can be reliably and readily detected and suppressed.

On March 9, 1988, LaSalle Unit 2 experienced an instability event. The ensuing work by both the staff and industry organizations have provided additional insight into thermal-hydraulic instabilities in BWR cores. The LaSalle event is described in NRC Information Notice 88-39, "LaSalle Unit 2 Loss of Recirculation Pumps With Power Oscillation Event," dated June 15, 1988. NRC Bulletin 88-07, also dated June 15, 1988, highlighted the generic concerns identified by the LaSalle event and requested all BWR licensees, regardless of BWR type or analytical core stability margin, to review the adequacy of procedures, instrumentation, and operator training programs to respond to power oscillations. In response to these concerns, the BWR Owners' Group (BWROG) initiated a project to investigate actions that should be taken to resolve the BWR stability issue.

On October 28, 1988, the General Electric Company (GE) notified the NRC under 10 CFR part 21 that thermal margins might not be sufficient to prevent violation of the minimum critical power ratio safety limit for some BWR plants if a 10-percent average power range monitor (APRM) oscillation was used as a procedural action point for manual scram of the plant. Based on this possibility, GE recommended stability "interim corrective actions" in a November 1988 letter to BWR utilities. On December 30, 1988, the NRC issued Bulletin 88-07, Supplement 1,

approving the proposed BWROG/GE interim operating recommendations and stating additional conditions. One of these conditions addressed the applicability of the experience-based stability exclusion boundaries defined in the interim corrective actions, and noted the need to reevaluate and justify these boundaries for cores that include new fuel designs. This bulletin also discussed long-term corrective actions. Such corrective actions might include hardware modifications or additions to facilitate manual or automatic protective response to avoid neutron flux oscillations or to suppress oscillations should they occur. Since it is possible for some oscillations to grow to levels exceeding NRC safety limits in the order of a minute, automatic protection action is generally indicated. These actions are being defined by a greatly expanded post-LaSalle BWROG study to develop a generic resolution to the stability issue.

In June 1991, the BWROG issued NEDO–31960 (Ref. 1) which documented proposed long-term solutions to the stability issue as well as methodologies that have been developed to support the design of these long-term solutions. Supplement 1 to NEDO–31960 (Ref. 2) was issued in March 1992 and contained final methodology details and additional information requested by the NRC. By a July 1993 letter from A.C. Thadani (NRC) to L.A. England (BWROG), the NRC transmitted its safety evaluation report on NEDO–31960 and its Supplement 1 (Ref. 3) to BWROG. Reference 3 describes the regulatory positions resulting from the staff review of the proposed solution concepts and associated methodologies. This letter requests information about licensee plans for implementation of the approved solution concepts and about actions taken to ensure that interim stability protection is adequate until the long-term solution is implemented.

This resolution assumes the protection system will function when required and does not consider the combination of instability and anticipated transients without scram (ATWS). That subject is being addressed by other NRC and BWROG activities.

*Need for Modification to Interim Corrective Actions*

In early 1992, the BWROG, citing its continuing studies, provided its members additional guidance on implementation of the interim corrective actions attached to NRC Bulletin 88–07, Supplement 1. In this guidance, the BWROG emphasized the need for caution when operating near the exclusion regions and recommended reexamination of procedures and training to ensure that uncertainties in the definition of exclusion region boundaries were appropriately reflected. The NRC staff considered this guidance in conjunction with an Augmented Inspection Team (AIT) review of a Washington Nuclear Power Unit 2 (WNP–2) 1992 instability event. The AIT report (Ref. 4) discusses that review and the BWROG guidance.

On August 15, 1992, Washington Nuclear Power Unit 2 (WNP–2) experienced power oscillations during startup. The NRC evaluated this event, concluding that the primary cause of the oscillations was very skewed radial and bottom peaked axial power distributions due to insufficient procedural control of control rod removal patterns during power ascension. It was concluded from discussions with other licensees that similar procedural practices were not unusual for some other BWRs. However, the vulnerability to instability was magnified in WNP–2 because the core loading consisted of a mixture of 9x9 and 8x8 fuel types which caused unbalanced flow and pressure drop characteristics. The WNP–2 event is described in NRC Information Notice 92–74, "Power Oscillations at Washington Nuclear Power Unit 2," dated November 10, 1992.

Most of the BWROG long-term solutions proposed in NEDO–31960 (Ref. 1) involve substantial modifications to the plant protection system hardware; these modifications are not expected to be ready for implementation until 1995–1996. The staff review of analytical studies in support of these solutions, and the circumstances leading to the WNP–2 event, have identified the following vulnerabilities which reflect uncertainty in the effectiveness of the current interim corrective actions to provide protection until implementation of the long-term solutions can be accomplished:

(1) Bulletin 88–07, Supplement 1, requested licensees of BWRs to take actions including a procedural requirement for a manual scram under all circumstances resulting in no recirculation pumps operating with the reactor in the RUN mode. This action was not applicable to plants with effective automatic scram protection against out-of-phase regional oscillations. Bulletin 88–07, Supplement 1 indicated that a flow-biased APRM scram circuit without a simulated thermal power monitor (filtered APRM signals) would provide such protection. However, more recent analyses by BWROG show that the flow-biased APRM scram does not provide sufficient protection for the out-of-phase mode of instability, which can produce very large asymmetric oscillations before exceeding the average power scram set point. The need for protection against out-of-phase oscillations remains under review for a few small core plants with small inlet orifices. Therefore, prior to completion of the long-term solutions reviews, the only plants that qualify for an exception to the Supplement 1 requested procedural requirement for manual scram are the BWR2 plants, Oyster Creek and Nine Mile Point 1, which have quadrant-based APRM scram protection.

(2) Bulletin 88–07, Supplement 1, endorsed the experience-based power/flow boundaries of the interim corrective actions based on the assumption that other factors important to the core stability characteristics (e.g., radial and axial peaking, feedwater temperature, and thermal-hydraulic compatibility of mixed fuel types) were consistent with previous experience and the bounding values expected during normal operation. The BWROG studies and the precautions recommended in the early 1992 letter to its members indicated that uncertainties existed in the definition of these boundaries (Ref. 4). The WNP–2 instability event and subsequent NRC evaluation determined that many licensees have given inadequate attention to the impact on core stability of the reload core design and operating procedures for changing reactor power. The WNP–2 experience also highlighted the value of using on-line stability monitors as an operational aid to avoid unstable operation; the capability for on-line stability monitoring does not exist currently for most BWRs.

*Requested Actions*

1. Within 60 days of receipt of this letter, all BWR licensees, except for Consumers Power Company (Big Rock Point, which does not have the capability for operation under variable flow conditions), are requested to review their operating procedures and operator training programs developed for the interim corrective actions and modify them as appropriate to strengthen the administrative provisions intended to avoid power oscillations or to detect and suppress them if they occur before the long-term solution can be implemented. The experience gained at WNP–2 should be a primary guide in this review. In doing this, each BWR licensee (except for Big Rock Point) should:

a. For all reactors except Oyster Creek and Nine Mile Point Unit 1, include procedural requirements for a manual

scram under all operating conditions when two recirculation pumps trip (or there are no pumps operating) with the reactor in the RUN mode;

b. Ensure that factors important to core stability characteristics (e.g., radial and axial peaking, feedwater temperature, and thermal hydraulic compatibility of mixed fuel types) are controlled within appropriate limits consistent with the core design, power/flow exclusion boundaries, and core monitoring capabilities of the reactor in question, and that these factors are controlled through procedures governing changes in reactor power, including startup and shutdown, particularly at low-flow operating conditions. If it is concluded that a near-term upgrade of core monitoring capability is called for to ease the burden on operators, determine the need to incorporate on-line stability monitoring or improved power distribution and thermal limits monitors, and inform the NRC of the schedule for such upgrades found to be necessary. The procedural operation controls implemented for the interim corrective actions should be considered for retention as appropriate to compliment plant specific long-term solution approaches.

2. By January 31, 1994, all BWR licensees, except for Big Rock Point, are requested to develop and submit to the NRC a plan for long-term stability corrective actions, including design specifications for any hardware modifications or additions to facilitate manual or automatic protective response needed to ensure that the plant is in compliance with General Design Criteria 10 and 12. An acceptable plan could provide for implementing one of the long-term stability solution options proposed by the BWROG and approved by the NRC in Reference 3 or in subsequent documentation. The plan should include a description of the action proposed and a schedule of any submittals requiring plant-specific design review and approval by the NRC and an installation schedule (if applicable). The plan should also address the need for near-term and long-term technical specification modifications.

*Reporting Requirements*

Pursuant to Section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), each holder of a BWR operating license, except for Big Rock Point, shall:

1. Within sixty (60) days of the date of this letter:

a. Inform the NRC, in writing and under oath or affirmation, of the licensee's plans and status with respect to the actions requested in this letter;

b. If the licensee does not plan to take an action requested in this letter, the reasons for not taking the action, a description of the nature of any substitute action, and a schedule for completing or implementing the substitute action;

2. If the licensee plans to take an action requested, or a substitute action, within thirty (30) days of the completion of the action inform the NRC, in writing and under oath or affirmation, of the action taken and verify its completion or implementation.

Each submittal shall be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy shall also be submitted to the appropriate Regional Administrator.

This generic letter requests information that will enable the NRC to verify that the licensee is complying with its current licensing basis regarding GDC 10 and 12. Accordingly, an evaluation justifying this information request is not necessary under 10 CFR 50.54(f).

*References*

1. NEDO–31960, "BWR Owners' Group, Long-Term Stability Solution Licensing Methodology," May 1991.
2. NEDO–31960, Supplement 1, "BWR Owners' Group Long-Term Stability Solutions Licensing Methodology," March 1992.
3. Letter from A. Thadani, NRC, to L.A. England, Chairman, BWR Owners' Group, Acceptance for Referencing of Topical Reports NEDO–31960 and NEDO–31960, Supplement 1, "BWR Owners' Group Long-Term Stability Solutions Licensing Methodology," dated July 1993.
4. Letter from J.B. Martin, NRC, to A.L. Oxsen, Washington Public Power Supply System, "NRC Augmented Inspection of Washington Nuclear Project, Unit 2", September 29, 1992.

*Backfit Discussion*

This generic letter defines the requested actions and reporting requirements to be met by all holders of BWR operating licensees, except for Consumers Power Company (Big Rock Point), in order to enhance the current interim corrective action and to provide a long-term solution to the issue of thermal-hydraulic instabilities in BWRs. The staff has concluded that these requested actions and reporting requirements are a backfit that is necessary to ensure compliance with GDC 10 and 12. The basis for the determination is stated in the preceding discussion of the generic letter. Accordingly, pursuant to 10 CFR 50.109(a)(4)(i), a backfit analysis is not required.

Dated at Rockville, Maryland, this 14th day of July, 1993.

For The Nuclear Regulatory Commission.

**Gail H. Marcus,**

*Chief, Generic Communications Branch, Division of Operating Reactor Support Office of Nuclear Reactor Regulation.*

[FR Doc. 93–17301 Filed 7–20–93; 8:45 am]

BILLING CODE 7590-01-M

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## Biweekly Notice

### Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 25, 1993, through July 9, 1993. The last biweekly notice was published on July 7, 1993 (58 FR 36423).

### Notice of Consideration of issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

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 the 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 before action is taken. 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 publication date 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 workdays. 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 a hearing and petitions for leave to intervene is discussed below.

By August 20, 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 for the particular facility involved. 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 a 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 a 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 or 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. Where 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 **(Project Director)**: 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment 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 for the particular facility involved.

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* June 11, 1993

*Description of amendment request:* The proposed amendment revises Technical Specification Surveillance Requirement 4.1.1.1.1 pertaining to the determination of shutdown margin by adding an "and" at the end of 4.1.1.1.1.c and removing the "and" and adding a semicolon at the end of 4.1.1.1.1.d. It also proposes to change the reference to 4.1.1.1.1.e in Surveillance Requirement 4.1.1.1.2 to read 4.1.1.1.1.d.

*Basis for proposed no significant hazards consideration determination:* 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:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

These administrative changes to Technical Specification Surveillance Requirement 4.1.1.1.1 have no affect on equipment, procedures or accident initiators. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since these are administrative changes, there are no modifications or additions to the plant equipment. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not affect parameters which relate to the margin of safety as defined in the Technical Specifications. Therefore, the proposed changes do not involve a significant reduction in a 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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602NRC Acting Project Director: S. Singh Bajwa

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of amendment request:* June 17, 1993

*Description of amendment request:* The proposed amendments would modify Technical Specification (TS) 5.3.1, Design Features of Fuel Assemblies, in accordance with the NRC's Generic Letter (GL) 90-02, Supplement 1, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications." The licensee proposes to adopt the model TS provided with Supplement 1 to the GL. This change would provide flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies.

*Basis for proposed no significant hazards consideration determination:* 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 proposed change to the requirements for "Fuel Assemblies" in the "Design Features" section of TS will not involve a significant increase in the probability or consequences of an accident previously evaluated because the modification merely provides a broader blanket under which any future specific modifications to the plant or changes to its safety analysis may be performed, while still requiring that any such changes meet the same standards and criteria that they would have been subject to.

The creation of a new or different kind of accident from any previously evaluated accident is not considered a possibility because the change is administrative in nature and does not represent an actual modification to the plant or change to its safety analyses.

The margin of safety is maintained by adherence to other fuel related TS limits and the FSAR [Final Safety Analysis Report] design bases. The change does not directly affect any safety system or the safety limits, and thus does not affect the plant margin of safety.

Accordingly, this proposed change does not involve a significant hazards consideration.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina**

*Date of amendment request:* June 23, 1993, as supplemented July 1, 1993

*Description of amendment request:* The proposed amendments would be a one time change to make the allowable combined bypass leakage rate given in Technical Specification 3.6.1.2 a value of 0.104 $L_a$ from the current value of 0.07 $L_a$ for Unit 1, Cycle 9.

*Basis for proposed no significant hazards consideration determination:* 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:

*(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:*

The increase in leakage through the main steam penetration bellows results in an increase in the consequence for accidents which require containment integrity for accident mitigation. Analysis of these accidents show that all dose consequences are within the McGuire licensing limits considering increased containment bypass leakage. There is no increase in the probability of an accident since no accident initiators are involved with this change.

*(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:*

Operation of McGuire Unit 1 in accordance with the revised containment bypass leakage rate will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

*(3) Involve a significant reduction in a margin of safety;*

While the conservatively measured leakage through one mechanical penetration bellows increased this outage, this leakage represents a small fraction of the allowable containment leakage. The proposed Technical Specification change increases the allowable containment bypass leakage rate. This still assumes that the containment remains operable and performs its safety function. The proposed changes to the Technical Specifications will not impact the overall performance of the containment and will not prevent it from performing its safety function. Even with the Technical Specification change, the containment will continue to prevent uncontrolled releases to the environment. All other fission product barriers remain in place and function to limit accident consequences. In the event of a postulated design basis accident (DBA), the proposed Technical Specification change would not result in doses in excess of NRC acceptance criteria. Analysis results indicated a very slight increase in the radiation dose to control room personnel. Accordingly, the proposed Technical Specification change would not result in 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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

*Attorney for licensee:* Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

*NRC Project Director:* David B. Matthews

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* March 19, 1993

*Description of amendment request:* The proposed amendment would change Technical Specification 4.18.6 and Table 4.18-2 to make the requirements for C-3 reports consistent with the Babcock & Wilcox Standard Technical Specifications.

*Basis for proposed no significant hazards consideration determination:* 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 proposed change] Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change does not affect reactor operations or accident analyses and has no radiological consequences. The proposed change deletes a purely administrative burden and provides clarification to existing Technical Specification requirements concerning Category C-3 Reports. Therefore this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[The proposed change] Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change deletes an administrative requirement and provides clarification to existing Technical Specification requirements. Since the proposed amendment would not change the design, configuration or method of operation of the plant, it would not create the possibility of a new or different kind of accident from any previously evaluated.

[The proposed change] Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change is administrative and concerns reporting requirements only. It does not change a safety limit, an LCO [limiting condition for operation], or a surveillance requirement on equipment required to operate the plant. The NRC retains the authority to review Entergy endeavors and take whatever action deemed necessary to ensure public health and safety. Therefore, no significant reduction in Margin of Safety is incurred.

Based on the above evaluation it is concluded that the proposed Technical Specification change does not constitute a significant hazards concern.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Terence L. Chan (Acting)

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* May 7, 1993

*Description of amendment request:* The amendment would change Technical Specification (TS) 6.12.3 by replacing the current references to Babcock & Wilcox topical reports with references to BAW-10179P-A, "Safety Criteria and Methodology for Acceptable Cycle Reload Analyses." The specification would also indicate that the approved revision number would be identified in the Core Operating Limits Report (COLR).

*Basis for proposed no significant hazards consideration determination:* 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:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The removal of specific methodologies from the administrative controls section of [the] Technical Specifications and referencing them in a specific topical report (BAW-10179P-A) has no impact on plant operation or safety. This change is administrative in nature. The proposed change does not affect the safety analyses, physical design, or operation of the plant. Future revisions to BAW-10179P-A will be reviewed and approved by the NRC prior to use for reload analyses.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The proposed change is administrative in nature. No physical alterations of plant configuration, changes to plant operating procedures or operating parameters are proposed. Because no new equipment is being introduced, and no equipment is being operated in a manner inconsistent with its design, the possibility of equipment malfunction is not increased. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety

The proposed changes are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. NRC review and approval of the methodologies used to perform the ANO-1 cycle-specific reload analysis is not affected by this change. Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the discussion of this amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Terence L. Chan, Acting

**Entergy Operations, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi**

*Date of amendment request:* June 25, 1993

*Description of amendment request:* This amendment proposes to modify the technical specifications to reflect appropriate portions of the guidance of NUREG-1434 (including relocating required surveillance and other editorial changes). In addition, the licensee proposes to relocate to plant administrative control procedures the requirement for the 31 day surveillance of the blowers and heaters identified in NUREG-1434 and the current technical specifications.

*Basis for proposed no significant hazards consideration determination:* 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:

a. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The relocation of the control of these surveillance requirements relating to the main steam isolation valve leakage control system (MSIV-LCS) involve no substantive changes to the surveillance and operability requirements currently contained in the Grand Gulf Nuclear Station (GGNS) Technical Specification (TS). The details of the surveillance requirements are currently in plant procedures. GGNS adheres to a policy of verbatim compliance with all plant procedures.

The information will be adequately controlled via the administrative requirements specified in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10 CFR 50.59. The requirements of 10 CFR 50.59 include a review of the evaluated change for impact on the probability or consequences of an accident previously evaluated. The requirements of 10 CFR 50.59 prevent any evaluated change which increases the probability or consequences of an accident previously evaluated from being made without prior NRC approval. These changes, therefore, constitute an administrative revision only.

Therefore, there is no significant increase in the probability or consequences of a previously evaluated accident due to the proposed changes.

b. This change would not create the possibility of a new or different kind of accident from any previously analyzed.

The relocation of the control of these surveillance requirements involve no substantive changes to the surveillance and operability requirements currently contained in the Grand Gulf Nuclear Station (GGNS) Technical Specification (TS). The details of the surveillance requirements are currently in plant procedures. GGNS adheres to a policy of verbatim compliance with all plant procedures.

The information will be adequately controlled via the administrative requirements in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10 CFR 50.59. The requirements of 10 CFR 50.59 include a review of the evaluated change to ensure that the change would not create the possibility of a new or different kind of accident from any previously analyzed. The requirements of 10 CFR 50.59 prevent any evaluated change which would not create the possibility of a new or different kind of accident from any previously analyzed from being made without prior NRC approval. These changes, therefore, constitute an administrative revision only.

Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

c. This change would not involve a significant reduction in the margin of safety.

The relocation of the control of these surveillance requirements involve no substantive changes to the surveillance and operability requirements currently contained in the Grand Gulf Nuclear Station (GGNS) Technical Specification (TS). The details of the surveillance requirements are currently in plant procedures. GGNS adheres to a policy of verbatim compliance with all plant procedures.

The information will be adequately controlled via the administrative requirements in TS 6.8 and TS 6.5.3. Those requirements include review of changes for unreviewed safety questions in accordance with the provisions of 10 CFR 50.59. The requirements of 10 CFR 50.59 include a review of the evaluated change for impact on the margin of safety. The requirements of 10 CFR 50.59 prevent any evaluated change which decreases the margin of safety from being made without prior NRC approval. These changes, therefore, constitute an administrative revision only.

Therefore, the proposed TS changes do not involve a significant reduction in a margin of safety.

Based on the above evaluation, Entergy Operations, Inc. has concluded that operation in accordance with the proposed amendment involves no significant hazards considerations.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., 12th Floor, Washington, DC 20005-3502

*NRC Project Director:* Terence L. Chan (Acting)

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment request:* June 21, 1993

*Description of amendment request:* The proposed amendments will change Technical Specifications (TS) Section 6.0, "Administrative Controls,≥by (a) revising unit staff titles to those of the current FPL Nuclear Division organization, (b) revising the composition of the Facility Review Group (FRG) to broaden the scope of available expertise, and (c) making minor editorial corrections.

*Basis for proposed no significant hazards consideration determination:* 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:

Pursuant to 10 CFR 50.92, a determination may be made that a proposed license amendment involves no significant hazards consideration if 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. Each standard is discussed as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises certain administrative controls and does not alter any parameter or equipment reliability assumptions that are contained in the plant safety analyses to evaluate the consequences of an accident. Technical Specifications that are in place to preserve safety analysis assumptions or that provide assurance that the unit operating staff qualifications are acceptable have not been changed. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of plant operation defined in the Facility License. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Changes proposed for the composition of the Facility Review Group will expand the scope of available expertise represented in that group and preserve its currently established qualifications, safety-related functions, responsibilities, and authority. The proposed amendment will not change the basis for any Technical Specification that is related to the establishment of or maintenance of nuclear safety margins. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of amendment request:* June 28, 1993

*Description of amendment request:* The proposed amendments would revise the Hatch Units 1 and 2 Technical Specifications (TS), Appendix A to Operating Licenses DRP-57 and NPF-5. Specifically, the request is to revise Unit 1 TS 3.7.A.4 and Unit 2 TS 3.6.4.1, and their associated Bases, to allow one or more suppression chamber - drywell vacuum breakers to open during surveillance testing or when performing their intended function without considering them inoperable.

*Basis for proposed no significant hazards consideration determination:* 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:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident of concern which requires vacuum breaker operability is the loss of coolant accident (LOCA). The requirement for all suppression chamber - drywell vacuum breakers to be closed ensures steam from a postulated LOCA is directed through the vent lines and is discharged under the water in the suppression chamber where it is condensed. If this steam avoids being condensed by traveling directly from the drywell to the suppression chamber air space through an open vacuum breaker, it could cause an unacceptable increase in containment pressure.

The Unit 2 hydrogen recombiner functional test involves operating the recombiner for 3 hours and is performed once per 6 months on each recombiner. Therefore, the total time any vacuum breaker may be open for this reason is approximately 12 hours per year. Since Unit 1 does not have a hydrogen recombiner system installed, the Unit 1 vacuum breakers would never be open for this reason. Since inerting and deinerting are only performed during plant startup and shutdown, vacuum breaker opening for this reason is also extremely infrequent. The probability of a LOCA occurring during one of these brief time periods is extremely small. Since the differential pressure increase is gradual for the above operations, it is expected that the degree of vacuum breaker opening is small. If a LOCA were to occur during this time, the resultant drywell pressure increase would force the vacuum breakers back to their closed position, thus eliminating the bypass leakage path. Since this proposed amendment will only allow vacuum breakers to open for a very short period of time, and the vacuum breakers would close if required to do so, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of vacuum breakers being open and the effect this could have on containment response to a LOCA have already been analyzed. In this situation, the vacuum breakers will be opening to relieve differential pressure between the suppression chamber and the drywell. Thus, the vacuum breakers would be operating per design for the purpose of performing their intended function. Allowing vacuum breakers to be open under these circumstances will not result in any new modes of plant operation or create any new failure modes. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

In the unlikely event a LOCA were to occur during the brief period of time the vacuum breakers are open, the resultant rapid increase in drywell pressure would cause the vacuum breakers to close. This would eliminate the bypass leakage path, and the containment pressure response to the LOCA would match the analyzed response. The resultant peak pressure would not exceed the design acceptance limit and the margin of safety would be unaffected. Therefore, the proposed amendment 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 proposed amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* David B. Matthews

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* March 24, 1993

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) by modifying the requirements of the TS Section 3.8/4.8 to improve organization and clarity. This is part of the Duane Arnold TS improvement program. This amendment request also proposes, upon the loss of one emergency diesel generator, to eliminate the requirement to synchronize to the grid while determining operability of the remaining emergency diesel generator. This submittal corrects inconsistencies and supersedes in entirety, an amendment request dated October 30, 1992, on the same subject.

*Basis for proposed no significant hazards consideration determination:* 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:

1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested

revisions do not affect the FSAR safety analysis involving these systems.

AC Power Systems

The revision to the applicability of TS Section 3/4.8.A, "AC Power Systems" only clarifies the wording. The systems are still required to be OPERABLE under the same conditions. Therevisions to the LCO statements are also clarifications of the current specifications and the normal responses of plant operations personnel. The revision to the shutdown requirement is consistent with STS and other sections in DAEC TS. Separating the start and loading portions of the EDG connected to the bus following a loss of the other EDG decreases the probability of the EDG being subject to grid transients or attempting to pick up non-safety related loads during loss of offsite power. No changes are proposed to the systems or operation of the DAEC. The AC electrical power systems will still be available for operation of normal and safety-related systems and components under the same conditions so that these changes will not increase the probability or consequences of an accident previously evaluated.

DC Power Systems

The changes to TS Section 3/4.8.B, "DC Power Systems" are administrative in nature: the applicability statement is revised consistent with 3/4.8.A; a shutdown requirement consistent with STS and other DAEC TS is specified; a reference to 3.7.D is added for the case when the 250 Volt DC System is inoperable; and references to 3.1 and 3.2 are added for the case when a +/- 24 Volt DC System is inoperable. These changes do not alter the system or its OPERABILITY. The DC power systems will still function when required to support plant operation. These changes will not significantly increase the probability or consequences of an accident previously evaluated.

Onsite Power Distribution Systems

The proposed new TS Section 3/4.8.C, "Onsite Power Distribution Systems" consolidates the OPERABILITY requirements and Surveillance Requirements for these systems into one section. This change also includes LCOs for the various AC buses consistent with the equipment powered by the respective buses. These changes result in an enhancement to the specification by clearly stating the system OPERABILITY, Surveillance and LCO requirements in one place. This change will not significantly increase the probability or consequences of an accident previously evaluated because no equipment or operational changes are proposed.

Auxiliary Electrical Equipment - CORE ALTERATIONS

No changes are proposed to this section except to renumber it consistent with the other proposed changes.

Emergency Service Water System

Minor editorial changes are proposed for this section as well as revising the conditional surveillance requirement. The proposed new requirement to "verify" instead of "demonstrate" that one pump or loop of Emergency Service Water (ESW) is still OPERABLE when the other pump or loop becomes inoperable will not degrade the reliability of ESW to function as required. The assurance that the OPERABLE pump or loop will function as required is provided by the ASME Section XI IST Program.

The probability of human error will decrease with reduced testing. Human error such as misalignment of valves after the system is returned to its normal configuration following testing and the distraction of operator attention from monitoring and directing plant operation is less likely to occur if this testing is eliminated. Additionally, reducing the scope and frequency of surveillance testing will decrease the probability of equipment failure (due to excessive testing) which could require plant shutdown. Therefore, this change will not increase the probability of occurrence or consequences of an accident previously evaluated.

The revisions to the Bases are administrative in that they only reflect the changes to the individual specifications described previously in this section. All changes are consistent with the applicable specifications.

(2) The proposed amendment will not increase the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons:

As described above in response to question #1, none of the proposed changes alters the design of the plant or equipment or the plant's transient response. The changes to the Limiting Conditions for Operation applicable to TS Section 3.8 are consistent with STS and better ensure that equipment assumed to be OPERABLE in our accident analysis will be OPERABLE upon demand. The addition of Limiting Condition for Operation will better ensure that the assumptions in our accident analysis remain valid.

The changes to the Surveillance Requirements are consistent with the STS. Those systems required to mitigate accidents evaluated in the UFSAR will still be OPERABLE and available.

The reduction in conditional surveillance testing of certain systems and equipment will reduce the probability of equipment failure as a result of excessive testing or due to human error.

(3) The proposed amendment will not involve a significant reduction in a margin of safety for the following reasons:

The revisions to the Limiting Conditions for Operation in Section 3.8 of the TS will not invalidate the original licensing basis assumptions and will not invalidate any assumptions or input parameters for any DAEC event analysis. These changes provide more specific guidance only and are in accordance with the STS.

Extending the time period within which the DAEC must achieve COLD SHUTDOWN conditions will permit increased operator attention and minimal distractions for operators during shutdown, thus minimizing the risk of unexpected operational transients.

Additional surveillance testing for certain systems will provide additional assurance that these systems will be available when needed.

Elimination of unnecessary or conditional surveillance testing will not reduce the minimum necessary equipment OPERABILITY requirements or equipment reliability. Elimination of the redundant testing will reduce equipment failure due to excessive testing or human error.

In summary, the proposed administrative changes do not change the probability or consequences of an accident previously evaluated, do not create the possibility of a new or different kind of accident and do not involve a reduction in the margin of safety.

Therefore, the proposed license amendment is judged to involve no significant hazards consideration.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* John N. Hannon

**Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* June 4, 1993

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) by modifying the requirements of the TS Section 3.6, "Primary Systems Boundary" and adding definitions into Section 1.0, "Definitions." The proposed changes provide additional definitions and improve clarity and consistency of LCOs and SRs. Most of the changes are consistent with Standard TS (NUREG-1202) while other changes are editorial or administrative in nature. Guidance provided by Generic Letters (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," and GL 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications," was used. This submittal corrects inconsistancies and supersedes in entirety, an amendment request dated December 31, 1992, on the same subject.

*Basis for proposed no significant hazards consideration determination:* 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:

1) The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The proposed changes discussed in this section are provided to enhance the overall quality and safety significance of the existing DAEC TS. The proposed TS do not change any accident analysis, plant safety analysis, calculations, degrade existing plant programs, modify any functions of safety related systems, or accident mitigation functions DAEC has previously been credited with. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. These changes have no effect on the consequences of a previously evaluated accident.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter any plant parameters, revise any safety limit setpoint, or provide any new release pathways. In addition, the proposed changes do not modify the operation or function of any safety related equipment, nor do they introduce any new modes of operation, failure modes, or physical changes to the plant. The proposed changes do not change any plant parameters or transient responses assumed in the Design Bases of the plant and therefore, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. Therefore, the proposed changes and corrections do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not require any modifications to existing plant systems or equipment, Emergency Operating Procedures, safety limit settings, or parameters utilized in the licensing bases for the safety analysis. These proposed changes are being made to enhance TS Section 3.6 by clarifying and making LCOs and SRs consistent throughout the section. In addition, several LCOs and SRs have been added, providing additional information that did not exist in the current TS. As discussed above, the proposed changes do not change any safety analysis or any accident mitigation actions for which DAEC has previously taken credit. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to the Bases Section 3.6 and 4.6 reflect the above changes and include various editorial corrections. These changes do 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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

*Attorney for licensee:* Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* John N. Hannon

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* May 12, 1993

*Description of amendment request:* The proposed amendment would delete the surveillance requirements for environmental monitors from the Technical Specifications (TS). A previous amendment relocated the surveillance requirements for the environmental monitors to the offsite dose calculation manual (ODCM), but through an administrative error, the surveillance requirements were not deleted from TS Table 4.1-3, Minimum Frequencies for Checks, Calibrations and Testing of Miscellaneous Instrumentation and Controls.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Neither accident assumptions nor analyses of the Maine Yankee Final Safety Analysis Report are affected by the proposed change. This is an administrative change to the TS. A previous amendment (T3Amendment No. 125, dated December 4, 1991), relocated the radiological environmental monitoring program (REMP) to the ODCM. The surveillance requirements for the air samplers were inadvertently left in the TS when the REMP was relocated to the ODCM. Requirements for continuous sampling--and at least weekly analysis--of airborne radioiodine and particulates, are found in Table 2.3 (page 53) of the licensee's ODCM.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither accident assumptions nor analyses of the Maine Yankee Final Safety Analysis Report are affected by the proposed change. The proposed change is an administrative change to the TS. The proposed change does not involve a test or experiment, or a modification to a system, and does not affect any plant equipment or operating procedures.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature, and does not affect any operating practice or operating limit. The proposed change affects no plant equipment or systems.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336

*NRC Project Director:* Walter R. Butler

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* June 7, 1993

*Description of amendment request:* The proposed amendment would modify Technical Specification (TS) 4.6.A, Safety Injection and Containment Spray Systems, to 1) require quarterly, vice monthly, testing of automatic core flooding and containment spray valves, 2) require that containment isolation valves not tested quarterly during reactor operation be tested during the next refueling outage, and 3) require an air flow test of all containment spray nozzles every 10 years, vice every 5 years. The proposed amendment also would modify TS 4.6.B, Emergency Feedwater Pumps, to require quarterly, vice monthly, testing of emergency and auxiliary feedwater pumps. Finally, minor editorial changes are made throughout TS 4.6.A and B to clarify existing requirements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1.The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the surveillance testing frequency for the subject valves, spray headers and feedwater pumps. The overall reliability of these motor operated valves is established and maintained through the licensee's adherence to NRC Generic Letter 89-10, Safety Related Motor-Operated Valve (MOV) Testing and Surveillance, and its supplements, as well as the In-Service Program required by 10 CFR 50.55a and Section XI of the ASME Boiler and Pressure Vessel Code. The revised surveillance frequency for feedwater pumps and containment spray nozzles is consistent with the requirements of NUREG-1432, Standard Technical Specifications, Combustion Engineering Plants, Sections 3.6.6 and 3.7.5, respectively.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the surveillance testing frequency of the subject valves, spray headers and feedwater pumps maintains operability verification, by performance of the existing surveillance tests for these components. No changes are made to any structures, systems or components.

3. The proposed amendment would not involve a significant reduction in a margin of safety.

The proposed change maintains operability verification for the subject valves, spray headers and feedwater pumps through performance of existing surveillance tests. Only the performance frequency of these surveillance tests is changed. The surveillance test frequency will be consistent with the applicable requirements of ASME Code Section XI and the Combustion Engineering Standard Technical Specifications.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 83 Edison Drive, Augusta, Maine 04336

*NRC Project Director:* Walter R. Butler

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of amendment request:* June 11, 1993

*Description of amendment request:* The proposed amendment revises the pressure/temperature (P/T) limits for the reactor vessel. Specifically, Figure 3.4-2, "Millstone Unit 2 Reactor Coolant System Pressure-Temperature Limitations for 12 Full Power Years," on page 3/4 4-19, is being revised to reflect the change in the curves and the title changed to "Millstone Unit 2 Reactor Coolant System Pressure-Temperature Limitations for 20 EFPY [effective full power years]."

*Basis for proposed no significant hazards consideration determination:* 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 proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed curves will not result in any plant operational or hardware modifications. They are adjusted to incorporate the results of the testing program on surveillance capsule W-104 which was removed from Millstone Unit No. 2 vessel after 9 EFPY. The proposed change upgrades the P/T limits to account for the neutron irradiation damage and it incorporates the recently developed LTOP [low-temperature overpressure protection] criteria recommended by the ASME Code which specifies a maximum LTOP pressure of 110 percent of the Appendix G pressure. The previous criteria required that the LTOP pressure be maintained below the Appendix G allowable pressure. This change is found to be acceptable since it will continue to preclude nonductile failure of the RCS [reactor coolant system] while providing operator flexibility and minimizing the frequency of challenges to the LTOP system. The parameters identified in Regulatory Guide 1.99, Revision 2, have been addressed and have showed acceptable results. Therefore, the probability of occurrence or consequences of an accident previously analyzed have not been increased.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed curves will not result in any plant operational changes. The P/T limit curves were developed and implemented under a rigorous Quality Assurance Program to preclude nonductile failure of the RCS. In addition, the vessel neutron irradiation damage estimation has been validated through the Millstone Unit No. 2 surveillance program, including the evaluation of surveillance capsule W-104. This evaluation also demonstrated that the USE [upper-shelf energy] for the limiting vessel materials will remain above the 10CFR50, Appendix G requirement of 50 ft-lbs, through the remainder of the vessel design life. The adherence to the P/T curves will ensure that no new or different kinds of accidents are created.

3. Involve a significant reduction in a margin of safety.

The margins of safety against nonductile failure of the RCS are ensured through the requirements of 10CFR50.61, which states that failure of the RCS under worst case pressurized thermal shock events is highly unlikely as long as the maximum $RT_{NDT}$ [Reference Temperature Nil Ductility Transition] does not exceed 270°F anywhere in the RCS. The 270°F requirement is not expected to be exceeded during the current design license of the RCS.

The adherence of these curves will ensure that the plant is maintained in a safe condition. These curves have been developed so that the reactor coolant pressure boundary is maintained with sufficient margin to ensure that, when stressed under operating, maintenance, testing, and postulated accident conditions that the boundary behaves in a nonbrittle manner, and that the probability of rapidly propagating fracture is minimized. In addition, these analyses have been performed to ensure that the fracture toughness of the reactor vessel materials caused by neutron radiation is maintained within the required range.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

*NRC Project Director:* John F. Stolz

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of amendments request:* June 11, 1993, as revised June 30, 1993.

*Description of amendments requests:* The proposed amendments would revise the Technical Specifications to increase fuel enrichment from 4.25 weight percent to 5.0 weight percent. This includes a revision to the Technical Specifications to allow 5.0 weight percent U-235 fuel to be stored in the new fuel vault and the spent fuel pool and used in the core. In addition, Technical Specifications are being

revised to increase the minimum RWST boron concentration and incorporate references to natural uranium and ZIRLO clad material into the reactor core design description.

*Basis for proposed no significant hazards consideration determination:* 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:

*[Fuel Enrichment Limit Changes]*

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

*Fuel Storage*

There is no increase in the probability of a fuel assembly drop accident in the new fuel storage area or the spent fuel pool since the mass of a fuel assembly does not increase when the fuel enrichment is increased.

There is not a significant increase in the consequences of a fuel assembly drop accident in the spent fuel pool since the fission product inventories in the fuel assemblies do not change significantly due to an increase in the fuel enrichment. Spent fuel gap activities, which are a function of fuel assembly burnup, are not directly affected by an increase in fuel assembly enrichment. The spent fuel gap activities are a function of fuel burnup, which will be increased by the use [of] higher enriched fuel. However, the increase in fuel burnup anticipated with the proposed increase in fuel enrichment is not expected to significantly effect the fuel gap activity. Additionally, fuel burnup is not expected to increase beyond the value currently assumed in the accident analysis until late in 1996. The possible offsite dose consequences of extending fuel burnup during subsequent cycles will be evaluated to ensure compliance with 10 CFR Part 100 requirements prior to the startup of the first cycle where the maximum fuel burnup currently assumed in the accident analysis is expected to be exceeded.

There is no increase in the probability or consequences of misplacing fuel assemblies in the spent fuel pool or new fuel storage racks as a result of an increase in fuel enrichment. The probability of misplacing a fuel assembly in the spent fuel pool or new fuel vault is not increased because fuel assembly placement will be controlled pursuant to the current approved fuel handling procedures and the requirements of the proposed Technical Specifications [TS]. Additionally, there is no increase in the probability of misplacing fuel assemblies in the new fuel storage racks because the racks will be modified to prevent the insertion of fuel assemblies in the central 14 cell locations assumed to be open in the criticality analysis.

There is no increase in the consequences of misplacing fuel assemblies in the spent fuel pool because criticality analyses demonstrate that the pool will remain subcritical assuming misplacement does occur if the pool contains an adequate boron concentration. The proposed [TS] will ensure that the adequate boron concentration is maintained when required.

There is no increase in the consequences of misplacing fuel assemblies in the new fuel storage racks because for any such event, the absence of a moderator in the new fuel storage racks can be assumed as a realistic initial condition since assuming its presence would be a second unlikely event. Since the normal, dry new fuel rack reactivity is less than 0.62 (Fig. 5, Exhibit D), there is sufficient reactivity margin to the 0.95 limit to cover any possible misplacement.

There is no increase in the probability of introducing optimum moderation conditions in the new fuel storage vault as a result of an increase in fuel enrichment. The increase in fuel enrichment will have no effect on the possible introduction of a moderating material into the new fuel vault.

There is no increase in the consequences of introducing optimum moderation conditions in the new fuel storage vault as a result of an increase in fuel enrichment. The new fuel vault has been analyzed under a range of moderation conditions from fully flooded to optimum moderation at the increased fuel enrichment. These analyses demonstrate that the new fuel storage racks remain subcritical under these moderation conditions.

*Reactor Core*

Operation of Prairie Island Units 1 and 2 with 5.0 weight percent U-235 fuel in the reactor core does not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

1. The use of 5.0 weight percent U-235 fuel in the reactor core will be evaluated as part of cycle specific reload analyses using NRC approved methodology. These cycle specific analyses will confirm that reactor operation with the higher enrichment reload fuel will meet all applicable requirements and acceptable criteria.

2. Neither actuation of safety systems nor accident mitigating capabilities will be adversely affected by operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel.

3. The proposed enrichment increase does not pose a challenge to installed safety systems. Therefore, no new performance requirements are being imposed on any system or component such that any design [criteria] will be exceeded.

*Conclusions*

Based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

*Fuel Storage*

Spent fuel handling accidents are not new or different types of accidents, in that they are already analyzed in the Updated Safety Analysis Report [USAR]. Criticality accidents in the new fuel storage vault or the spent fuel pool are not new or different types of accidents in that they are already analyzed inthe [USAR] for fuel enrichments up to 4.25 weight percent U-235. Additional criticality analyses (Exhibit D) have been performed for fuel enrichments up to 5.0 weight percent U-235.

As described above, the storage of higher enrichment fuel in the new fuel racks will require the modification of 14 central cells of the new fuel storage racks to prevent insertion of new fuel assemblies. The modifications and their installation will be minor in nature and as such will not create the possibility of a new or different kind of accident.

The administrative controls which will be implemented to control the storage of higher enrichment fuel will only affect where spent fuel assemblies can be stored and the required spent fuel pool boron concentration. Limiting where fuel assemblies can be stored in the spent fuel pool will have little affect on fuel handling operations and the boron concentration required for the storage of higher enriched fuel is well below the boron concentration normally maintained in the spent fuel pool. Therefore, the implementation of these administrative controls will not create the possibility of a new or different kind of accident.

The Prairie Island spent fuel racks utilize boraflex sheets between the storage cells to assure subcriticality of the racks. Even though the boraflex sheets in the spent fuel racks were not adhesively constrained during construction, which reduces the likelihood of gaps forming, concerns related to the possibility of gaps having formed in the boraflex sheets due to radiation induced shrinkage, were addressed in the criticality analysis by assuming four inch axial gaps at the axial center of the active fuel in all the boraflex panels in the spent fuel pool. This four inch gap is considered conservative based on neutron radioassay measurements of the boraflex poison material. The centerline positioning of the gap is also considered conservative because it resulted in the highest calculated $K_{eff}$.

Fuel assembly decay heat production is a function of core power level, and since the core power level remains unchanged, the decay heat load on the spent fuel pool cooling system will not be significantly impacted by the proposed enrichment limits.

*Reactor Core*

Operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel will not create any initiators for accidents, including any accidents that may be different from those already evaluated in the [USAR].

*Conclusions*

As discussed above, the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology. Therefore, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

*Fuel Storage*

The spent fuel pool storage configuration required by proposed specification 3.8.E will provide the administrative controls necessary to assure that fuel assemblies with the potential to form a critical array in the spent

fuel pool are segregated such that $K_{eff}$ will remain less than 0.95. The spent fuel pool boron required by proposed Specification 3.8.E will provide an additional safety margin to ensure criticality will not occur even if fuel assemblies were not stored in the required configuration.

The criticality analysis showed that $K_{eff}$ for the existing new fuel rack configuration would remain less than 0.95 with full density moderation.

The modification to prevent storage of new fuel assemblies in central 14 cells of the new fuel storage rack will assure that $K_{eff}$ will remain less than 0.98 when the new fuel racks are under optimum moderation conditions.

Therefore, since the calculated values of $K_{eff}$ have been shown to be bulated $K_{eff}$.

Fuel assembly decay heat production is a function of core power level, and since the core power level remains unchanged, the decay heat load on the spent fuel pool cooling system will not be significantly impacted by the proposed enrichment limits.

*Reactor Core*

Operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel will not create any initiators for accidents, including any accidents that may be different from those already evaluated in the [USAR].

*Conclusions*

As discussed above, the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology. Therefore, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

*Fuel Storage*

The spent fuel pool storage configuration required by proposed specification 3.8.E will provide the administrative controls necessary to assure that fuel assemblies with the potential to form a critical array in the spent fuel pool are segregated such that $K_{eff}$ will remain less than 0.95. The spent fuel pool boron required by proposed Specification 3.8.E will provide an additional safety margin to ensure criticality will not occur even if fuel assemblies were not stored in the required configuration.

The criticality analysis showed that $K_{eff}$ for the existing new fuel rack configuration would remain less than 0.95 with full density moderation.

The modification to prevent storage of new fuel assemblies in central 14 cells of the new fuel storage rack will assure that $K_{eff}$ will remain less than 0.98 when the new fuel racks are under optimum moderation conditions.

Therefore, since the calculated values of $K_{eff}$ have been shown to be below the regulatory limits and because they reflect a substantial sub-critical configuration for both the fuel storage areas under adverse conditions, the proposed changes will not result in a significant reduction in the plant's margin of safety.

*Reactor Core*

Operation of the Prairie Island reactors with 5.0 weight percent U-235 fuel will not involve a significant reduction in a margin of safety because increasing the fuel enrichment in the reactor core does not change the conclusions of the accident analysis or safety limits of the plant. Additionally, the use of higher enrichment fuel will not adversely affect the operation of the fuel in the reactor core and does not decrease the margin of safety as described in the bases to any [TS.]

*Conclusions*

Based on the conclusions of the above analysis, the proposed changes will not involve a significant reduction in the margin of safety.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

*[Refueling Water Storage Tank Boron Concentration Limit Changes]*

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

An increase in the required minimum RWST boron concentration has no effect on the probability of any accident previously evaluated.

The increase in the required minimum RWST boron concentration will ensure that the reactor will remain subcritical following a LOCA for reload cores utilizing fuel enriched to 5.0 weight percent U-235. Therefore, the proposed change will ensure [that] there is no increase in the consequences of a LOCA when fuel enriched up [to] 5.0 weight percent U-235 is utilized in the core.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

Increasing the minimum RWST boron concentration to 2500 ppm will have no significant impact on plant operations since the actual RWST boron concentration is normally above that concentration and because no change is required in the way RWST boron concentration is controlled and maintained.

Because the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

Increasing the minimum RWST boron concentration required by Technical Specification 3.3.A.1.a to 2500 ppm will provide adequate negative reactivity to ensure that the reactor will remain subcritical following a LOCA for reload cores utilizing fuel enriched to 5.0 weight percent U-235. The evaluation of post-LOCA long term shutdown margin performed as a part of each Reload Safety Evaluation will provide continued assurance that the 2500 ppm RWST boron concentration limit is adequate to maintain post-LOCA shutdown margin.

Therefore, since the increased RWST minimum boron concentration and cycle specific Reload Safety Evaluations will ensure that the reactor will remain subcritical following a LOCA, the proposed changes will not result in a significant reduction in the plant's margin of safety.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

*[Reactor Core Design Description Changes]*

*1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The incorporation of natural uranium and ZIRLO clad into the Technical Specification reactor core design description and use of those materials in the reactor core will not [affect] the probability of any accident previously evaluated.

The incorporation of natural uranium into the reactor core design description in Section 5.3.A.1 of the Prairie Island [TS] is strictly a clarification. Natural uranium has been previously used in the Prairie Island reactor cores in the form of axial blankets and replacement fuel rods. Natural uranium will respond to accident conditions in a manner similar to slightly enriched uranium. Additionally, fuel rods containing natural uranium instead of slightly enriched uranium will have lower gap activities which would slightly reduce the consequences of an accident. Therefore, the use of natural uranium in the reactor core has no significant effect on the consequences of an accident.

The use of ZIRLO clad material will not increase the consequences of an accident. ZIRLO clad has improved mechanical properties such as a lower corrosion rate and reduced radiation induced growth which may improve the fuel clad response to accident conditions. The NRC revised the acceptance criteria in 10 CFR Part 50, Sections 50.44 and 50.46 (Federal Register dated August 31, 1992), relating to evaluations of emergency core cooling systems and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to the federal regulations made ZIRLO an acceptable zirconium based cladding material along with zircaloy.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

*2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.*

Because the proposed changes do not result in any significant change in the configuration of the plant, equipment design or equipment use nor do they require any change in the accident analysis methodology, no different type of accident is created. No safety analyses are affected. The accident analyses presented in the [USAR] remain bounding.

*3. The proposed amendment will not involve a significant reduction in the margin of safety.*

The incorporation of natural uranium into the reactor core design description of the Prairie Island [TS] is strictly a clarification. Natural uranium has been previously used in the Prairie Island reactor cores in the form of axial blankets and replacement fuel rods. Any use of natural uranium in the reactor cores will be evaluated with NRC approved methodologies prior to use. The use of natural uranium has no effect on the safe operation of the reactor. The incorporation of natural uranium into the reactor core design description is consistent with the guidance provided in Section 4.2.1 of the Westinghouse Standard Technical Specifications, NUREG-1431.

ZIRLO clad has a lower corrosion rate and reduced radiation induced growth which will enhance the safe operation of the Prairie Island reactors. Any use of ZIRLO clad fuel in the reactor cores will be evaluated with NRC approved methodologies prior to use. The neutronic properties of ZIRLO are nearly identical to those of Zircaloy and therefore the use of ZIRLO is not expected to have any significant effect on the results of the core reload analyses. The NRC revised the acceptance criteria in 10 CFR Part 50, Sections 50.44 and 50.46 (Federal Register dated August 31, 1992), relating to evaluations of emergency core cooling systems and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to the federal regulations [made] ZIRLO an acceptable zirconium based cladding material along with zircaloy.

Therefore, the proposed changes will not result in a significant reduction in the plant's margin of safety.

Based on the evaluation described above, and pursuant to 10 CFR Part 50, Section 50.91, Northern States Power Company has determined that operation of the Prairie Island Nuclear Generating Plant in accordance with the proposed license amendment request does not involve any significant hazards considerations as defined by NRC regulations in 10 CFR Part 50, Section 50.92.

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.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

*Attorney for licensee:* Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037NRC Acting Project Director: W. M. Dean

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment requests:* May 7, 1993 (Reference LAR 93-01)

T3

*Description of amendment requests:* The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to amend TS 3/4.3.3.5, "Remote Shutdown Instrumentation." The proposed changes add remote shutdown control functions, increase the allowed outage time (AOT) for an inoperable remote shutdown function (instrumentation and control) from 7 days to 30 days, add an Action Statement that clarifies that separate entry is permitted for each function listed in Table 3.3-9, and revise the associated TS Bases.

*Basis for proposed no significant hazards consideration determination:* 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:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to TS 3.3.3.5 do not alter the plant configuration or operation. The inclusion of remote shutdown control functions constitute additional restrictions over the remote shutdown system. Since the remote shutdown instrumentation and controls are not part of the primary success path to mitigate a design basis accident or transient [that] either assumes the failure or [presents] challenges to the integrity of a fission product barrier, and since the probability of an event that would require evacuation of the control room is low, the 30-day AOT [allowed outage time] is

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to TS 3.3.3.5 do not require physical alteration to any plant system or change the method by which any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes to TS 3.3.3.5 will not change any assumptions, initial conditions, or results of any accident analysis. Consequently, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

*NRC Project Director:* Theodore R. Quay

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of amendment requests:* May 14, 1993 (Reference LAR 93-02)

T3

*Description of amendment requests:* The proposed amendment would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise Technical Specification (TS) 3.3.1, "Reactor Trip System Instrumentation," regarding the Reactor Protection System (RPS). The proposed TS corrects a typographical error in Table 3.3-1, Action 26, by adding the words "the next," to clearly state that a total of 12 hours is allowed to perform maintenance.

*Basis for proposed no significant hazards consideration determination:* 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:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The TS revisions proposed in this LAR do not change the operating methodology of Diablo Canyon. The proposed administrative change corrects the Action statement as previously approved and is consistent with NRC [Safety Evaluation Report] SER dated April 30, 1990.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the Diablo Canyon TS are administrative in nature. Further, the proposed change would not result in any physical alteration to any plant system not previously approved, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

[These administrative changes do not alter the basic regulatory requirements and do not affect any safety analyses.]

The proposed change corrects the Diablo Canyon Power Plant RPS [allowed outage times] AOT, this change is consistent with previous NRC review and approval in [License Amendments] LA 61 and 60.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

*Attorney for licensee:* Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

*NRC Project Director:* Theodore R. Quay

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* April 1, 1993

*Description of amendment request:* The licensee requested changes to the Peach Bottom Atomic Power Station, Units 2 and 3 Technical Specifications (TS) that will allow operation in an expanded operating domain. The existing operating domain would be modified to include the extended operating region on the reactor power-to-flow map bounded by the rod line that passes through the 100% power/75% core flow point (at approximately the 121% rod line). Operation in the expanded domain will require changes to the Average Power Range Monitor (APRM) and Rod Block Monitor (RBM) systems and associated TS. Operation in the expanded domain is based on the Maximum Extended Load Line Limit Analyses (MELLLA) performed by the General Electric Company (GE) in a Peach Bottom plant-specific report. The licensee has evaluated the proposed TS revisions as three separate changes. The first proposed change deletes the flow-biased APRM scram and rod block trip setpoint setdown requirements, deletes reference to the $k_f$ flow adjustment factor, introduces power and flow dependent adjustments to the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Minimum Critical Power Ratio (MCPR) limits, revises the documentation requirements of the Core Operating Limits Report (COLR) and deletes the definitions of the Fraction of Rated Thermal Power (FRP) and the Maximum Limiting Power Density (MFLPD). The second proposed change modifies the flow-biased APRM scram and rod block trip equations to accommodate an expanded operating domain. The third proposed change modifies the RBM trip setpoints.

*Basis for proposed no significant hazards consideration determination:* 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:

1. The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Proposed Change 1: There will be no impact on the probability of any accident previously evaluated since the change applies a new methodology for assuring that the fuel thermal and mechanical design bases are satisfied and has no effect upon any accident initiating mechanism. The proposed change identifies that the adjustments to the MCPR and MAPLHGR limits, as specified in the Core Operating Limits Report, will be made as a function of core flow and power. These adjustments are determined using NRC approved methods as required by Technical Specification 6.9.1.e.2. Operation within the operating limits will ensure that the consequences of any accident which could occur would be within the acceptable limits. Thus, there is no significant change in the consequences of any accident previously evaluated.

Proposed Change 2: The proposed change expands the power and flow operating domain by relaxing the restrictions imposed by the formulation of the flow-biased APRM rod block and scram trip setpoints. The probability of any accident is not increased by operating in the expanded operating domain because formulation of the flow-biased APRM rod block trip equation (including a new maximum value for the APRM rod block) has been established to maintain margin between the rod block setpoint and the scram setpoint. Additionally, this change will have no effect on any accident initiating mechanisms. The consequences of anticipated operational occurrences have been evaluated using NRC approved methods and the proposed setpoint formulations have been selected such that the consequences of any accident remain bounded by NRC approved criteria.

Proposed Change 3: The RBM system is not involved in the initiation of any accident and does not increase the probability of the occurrence of any accident. The RBM system only serves to mitigate the consequences of one event; the rod withdrawal error (RWE) anticipated operational occurrence. Analyses of the RWE were performed using NRC approved methods for the modified RBM configuration and setpoints. The results demonstrate that the consequences of the RWE event are less severe with the modified RBM system than with the current configuration. Therefore, the proposed change does not involve an increase in the consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Proposed Change 1: The proposed change eliminates the requirement for setdown of the flow-biased APRM scram and rod block trip setpoints under specified conditions and substitutes adjustments to the MCPR and MAPLHGR operating limits. Because the MCPR and MAPLHGR limits will continue to be met, no transient event will escalate into a new or different type of accident from any accident previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 2: Changing the formulation for the flow-biased APRM rod block and scram trip setpoints does not change their respective functions and manner of operation. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM rod block setpoint. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Proposed Change 3: The proposed change does not alter the function of any component or system other than the RBM system. The changes to the RBM system have been designed to enhance the reliability and accuracy of the RBM system without impacting the degree of isolation of the RBM system from other plant systems. The function of the RBM system does not change. The change does not involve a new sequence of events or the introduction of a new failure mode that could create a new or different kind of accident. Therefore, the proposed change does not create the possibility of a

new or different kind of accident from any accident previously evaluated.

3. The proposed change does not result in a significant reduction in a margin of safety.

Proposed Change 1: The changes in the operating limits will maintain the existing margin to safety limits. The new adjustments impose thermal limit restrictions such that the consequences of anticipated operational occurrences are no more severe than the most limiting conditions with the current Technical Specifications with the flow-biased APRM scram and rod block setpoint setdown provisions. The flow and power adjustment factors were determined using NRC approved methods and satisfy the same NRC approved criteria met by analyses assuming setdown of the flow-biased APRM scram and rod block setpoints. The impact of eliminating the setdown requirements on the LOCA response has been evaluated at low flow conditions and all 10 CFR 50.46 and 10 CFR 50, Appendix K criteria have been met. Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

Proposed Change 2: The APRM rod block trip setpoint will continue to block control rod withdrawal when core power significantly exceeds normal limits and approaches the scram level. The APRM scram trip setpoint will continue to initiate a scram if the increasing power/flow condition continues beyond the APRM rod block setpoint. Operation in the new expanded operating domain has been analyzed by General Electric and sufficient margin to design limits exist. Therefore, the proposed change does not involve a reduction in the margin of safety.

Proposed Change 3: The proposed change revises the setpoints for the RBM system which is solely designed to mitigate the consequences of the RWE event. The RBM setpoint is being changed from a flow biased equation to 3 discrete power dependent setpoints. Analyses of the RWE event are used to derive the setpoints such that the safety limit for the minimum critical power ratio (MCPR) will not be challenged. By an appropriate selection of the setpoints, the RWE will not be the limiting event and will not determine the operating limit MCPR. In this respect, the RBM setpoints are dependent upon the operating limit MCPR values which depend on the cycle-specific conditions. For this reason, the proposed change also identifies that these setpoints are specified in the COLR. The COLR is prepared based on the results of analyses using NRC approved methods as required by Technical Specification requirements for the COLR. The operating limit MCPR maintains the margin of safety for this thermal limit. Thus, the proposed change does not involve a reduction in 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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* Charles L. Miller

**Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* May 25, 1993

*Description of amendment request:* The licensee proposes to make several administrative changes to the Technical Specifications. The first change (licensee technical specification change request (TSCR) 92-06) removes reference to the service platform hoist from TS 3.10.A.4, TS Bases Section 3.10 and TS 4.10.A.3. The service platform hoist has been removed since 1985 and the proposed changes update the TS to reflect the removal of the service platform hoist. The second change (licensee TSCR 93-03) corrects a typographical error to TS Table 3.2.B. The revision will reflect the correct setpoint tolerance (plus or minus 5%) for the Emergency Transformer Degraded Voltage Inverse Time relays. The setpoint tolerance was incorrectly listed as plus-5% when the setpoint was originally incorporated into the TS by amendments 97 (Unit 2) and 99 (Unit 3). The third change (licensee TSCR 93-04) clarifies the bases for the Turbine Control Valve Fast Closure and Turbine Stop Valve Closure scram signal bypass setpoints. The updated bases change is made to Note 4 to TS Table 3.1.1 and to TS Bases Section 3.1.

*Basis for proposed no significant hazards consideration determination:* 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:

Licensee proposes that this application does not involve significant hazards considerations for the following reasons:

i) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

TSCR 92-06 proposes to delete references to the Service Platform Hoist due to the fact that it has been physically removed from service. Deletion of these references will enhance safety by providing clarity when interpreting the Technical Specifications.

TSCR 93-03 proposes to correct a typographical error regarding the setpoint tolerance of the Emergency Transformer Degraded Voltage Relay. Correction of this typographical error will enhance safety by eliminating confusion in interpreting the Technical Specifications.

TSCR 93-04 proposes to change the basis, based on GE SIL 423, for which the bypass setpoint for the Turbine Stop Valve Closure and the Control Valve Fact Closure scram signals are established.

Because the above proposed changes are administrative in nature, they do not affect the initial conditions or precursors assumed in the Updated Final Safety Analysis Report Section 14. These changes do not decrease the effectiveness of equipment relied upon to mitigate the previously evaluated accidents.

Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

ii) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not make any physical changes to the plant or changes to operating procedures. Therefore, implementation of the proposed changes will not affect the design function or configuration of any component or introduce any new operating scenarios or failure modes or accident initiation.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

iii) The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and are intended to provide clarification or eliminate confusion when interpreting the Technical Specifications. The proposed changes do not adversely affect the assumptions or sequences of events used in any accident analysis.

Therefore, the proposed changes do not involve a reduction in any 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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* Charles L. Miller

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of amendment request:* June 28, 1993

*Description of amendment request:* The proposed change would add a footnote to Technical Specification (TS) 4.7.A.2.f to indicate that a Type A, B, or C test is not required following the replacement of piping and welds in the Core Spray System minimum flow lines during the 1993 maintenance outage. Replacement of sections of these lines is necessary because wall thinning was discovered during the 1992 refueling outage. The licensee has proposed to implement an alternate inspection program in lieu of a Type A, B, or C test currently required by the TSs and 10 CFR Part 50, Appendix J, Section IV.A. The licensee submitted a request for an exemption from this requirement of 10 CFR Part 50, Appendix J, concurrent with the request for amendment of the TSs.

*Basis for proposed no significant hazards consideration determination:* 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:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability of an accident or consequence previously evaluated. The proposed change would allow for the replacement of piping and welds which constitute the Core Spray System minimum flow lines (3≥-W23-152-7A, B), without performing a leakage test as required by Technical Specifications. This replacement will improve the structural capability of the Core Spray System by use of improved materials. [Performance of] 100% radiography, system leakage test, and surface examinations on the new welds forming a portion of the primary containment boundary will assure structural integrity of the new welds and the lack of any flaws through which a leakage path could develop. Since the structural integrity of the containment pressure boundary through these new welds are assured, the probability of occurrence or consequences of any accident previously evaluated is not significantly increased.

2. create the possibility of a new or different kind of accident from those previously evaluated. Not performing an ILRT [integrated leak rate test] during the Fall 1993 maintenance outage cannot initiate any type of accident. The replacement of piping and welds which constitute the Core Spray System minimum flow lines (3≥-W23-152-7A,B) improves the Core Spray System structural capability. Using the improved material for this piping reduces the probability of cavitation induced pitting in the future. The planned compensatory measures provide assurance of the structural and leak integrity of the piping. Since the structural integrity of the containment pressure boundary through these welds are assured, no change is made to the possibility of a new kind of accident from those previously evaluated.

3. involve a significant reduction in the margin of safety. Performance of 100% radiography, surface examinations, and a system leakage test, in lieu of a pneumatic leak rate test on the new welds, is conservative. These examinations assure the structural integrity of the new welds and the lack of any flaws through which a leakage path could develop. In combination, these examinations ensure zero leakage through the new welds. The construction code (ANSI B-31.1-1967) allows for 100% radiograph as an alternate to leakage testing when such testing is not practicable. There is no reduction of any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

*Attorney for licensee:* Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

*NRC Project Director:* Robert A. Capra

**Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama**

*Date of amendments request:* March 4, 1993, as supplemented June 29, 1993

*Description of amendments request:* The requested amendment would (1) delete the references to diesel generator 2C from Technical Specifications (TS) 3/4.8.1.1 and 3/4.8.1.2; (2) revise the diesel generator test schedule based upon the Nuclear Management and Resources Council (NUMARC) guidance for determining the number of allowable failures and valid demands;(3) delete 600 volt load centers J and H as listed in TS 3/4.8.2; and(4) revise the requirements of TS 6.9.1.12 for the Annual Diesel Generator Reliability Report; and (5) revise TS 6.8.1 to include a reference to the document that provides the testing, maintenance, and procurement requirements applicable to the 2C diesel generator and to include a requirement to inform the NRC if the 2C diesel generator is out of service for more than 10 days.

*Basis for proposed no significant hazards consideration determination:* 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:

(1) The proposed changes to the electrical system technical specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated. The elimination of diesel generator 2C as an emergency power source will not impact the remaining four EDGs ability to supply all shutdown loads during the worst case design basis accident with LOSP [loss of offsite power]. The revised testing schedule will provide asssurance that individual EDGs are maintained in a high degree of reliability and that the calculated unit reliability is within the limits required by the SBO rule.

(2) The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. No new failure mechanisms are being introduced which could create a new or different accident than those previously evaluated. All equipment required to complete a safe unit shutdown following a design basis event will continue to receive emergency electrical power should a total loss of offsite power occur.

(3) The proposed changes do not involve a significant reduction in a margin of safety. The emergency electrical power system's ability to cope with the worst case design event, considering a single failure, is unaffected by the proposed technical specification changes. The minor increase in electrical loading on the remaining train B EDGs, as a result of the designation of DG 2C as the SBO AAC, will not exceed the rated capacity of the EDGs. The assumptions used in the analyses of the design basis events will not be impacted by the proposed elimination of DG 2C. The revised test schedule is consistent with the SBO rule's goal of enhanced EDG reliability.

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 amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

*Attorney for licensee:* James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

*NRC Project Director:* S. Singh Bajwa

**Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia**

*Date of amendment request:* March 15, 1993, resubmitted April 21, 1993

*Description of amendment request:* The proposed amendments to the Technical Specifications (TS) would permit use of the two new Main Control Room and Emergency Switchgear Room (ESGR) Air Conditioning System chillers to meet the Limiting Condition for Operation and establish an allowed time period to restore a chiller to operable status when two of the required three chillers become inoperable. An action statement is being added to allow one hour to restore one of two inoperable chillers to operable, when two of the three required chillers become inoperable, prior to shutting down both Surry units. Since the Air Handling Units (AHU) associated with the chiller system have been returned to 100% capacity, the associated fire watch is no longer necessary in the ESGRs, thus the Basis section of the TS is being revised to delete the required fire watch in the ESGRs. Defined words are being capitalized throughout TS Section 3.23 and system names are being capitalized and acronyms are being spelled out for consistency

*Basis for proposed no significant hazards consideration determination:* 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 proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Main Control Room and Emergency Switchgear Room Air Conditioning System is not involved in the initiation of any previously evaluated accidents. Therefore, the probability of such accidents is not affected. The requirement to have three chillers operable whenever either unit is above Cold Shutdown is being maintained. Any three operable chillers, powered from three of the four emergency buses with one of the chillers capable of being powered from the fourth emergency bus, will continue to provide equivalent capacity and redundancy to remove the heat load during normal and accident conditions. Providing one hour to restore a second chiller to operable status when there is only one operable chiller does not change air conditioning system or equipment operation. Therefore, the probability of occurrence and the consequence of an accident previously evaluated is not increased.

Elimination of the fire watch in the emergency switchgear rooms does not affect the probability or consequences of any previously analyzed accident. The firewatch was an interim measure pending completion of the AHU upgrade restoring air handling capacity to original design. The AHU modifications are complete and the interim firewatch is no longer necessary. Therefore, the fire watch has no impact on the probability of occurrence or consequences of an accident. The administrative changes do not impact plant operation or system design. Thus, the consequences of an accident are not being affected by this change.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new failure modes or accident precursors. Eliminating the specific chiller identification from the operability requirements does not create any new or different kind of accident scenarios. Operation of the Main Control Room and Emergency Switchgear Room Air Conditioning System does not change. Providing one hour to restore a second chiller to operable status when there is only one operable chiller does not change air conditioning system or equipment operation.

Elimination of the fire watch in the Emergency Switchgear Rooms does not create any new or different kind of accident scenario. The air handling capacity in the Main Control and Emergency Switchgear Rooms has been restored to original design capacity. Therefore, the interim firewatch is unnecessary for Appendix R considerations. The administrative changes do not impact plant operation or system design. Therefore, no new or different kind of accident is being created.

3. Involve a significant reduction in a margin of safety.

The revised Technical Specification maintains the required capacity and redundancy in the Main Control Room and Emergency Switchgear Room Air Conditioning System to ensure sufficient heat removal during normal and accident conditions. Providing one hour to restore a second chiller to operable status when there is only one operable chiller does not significantly reduce the margin of safety.

The air handling capacity in the Main Control Room and Emergency Switchgear Room has been restored to original design capacity. Therefore, the interim firewatch is unnecessary for Appendix R considerations. The administrative changes do not impact plant operation or system design. Therefore, the margin of safety as defined in any Technical Specification is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

*Attorney for licensee:* Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219

*NRC Project Director:* Herbert N. Berkow

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* February 23, 1993

*Description of amendment request:* This amendment would revise the Technical Specifications (TS) in Section 3.5, "Instrumentation System," Table 3.5-6, "Instrumentation Operating Conditions for Indication," and Table 4.4-1, "Minimum Frequencies for Checks, Calibrations and Test of Instrument Channels." The proposed amendment would add operability and surveillance requirements for the reactor vessel level indication and core exit thermocouple instrumentation installed at Kewaunee in 1987 as part of the instrumentation to detect inadequate core cooling. Similar additions are proposed for the wide range steam generator level instrumentation upgraded in 1992. Administrative changes are also being proposed dealing with format and typographical inconsistencies.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are consistent with the guidance provided in NRC Generic Letter 83-37. Specifically, surveillance requirements, limiting conditions for operation, and required actions are provided for the instrumentation. These new specifications help to ensure instrument reliability and availability, and add restrictions not presently included in the TS. The other proposed changes are administrative in nature. Hence, the probability or consequences of an accident previously evaluated would not be increased.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would not alter the plant configuration, operating set points or overall plant performance. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated would not be created.

The proposed changes would not involve a significant reduction in the

margin of safety. The proposed changes include enhancements to the specifications and additional controls and limitations. Hence, overall plant safety would be enhanced, and the margin of safety would not be reduced.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* May 4, 1993

*Description of amendment request:* This proposed amendment would remove the Radiological Effluent Technical Specifications (RETS) from the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications. This proposed amendment is in accordance with the Nuclear Regulatory Commission's (NRC) Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or the Process Control Program," dated January 31, 1989. Generic Letter 89-01 summarizes the results of the NRC's study of the RETS as it relates to the Commission's Interim Policy Statement on Technical Specification Improvements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because relocating the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP) is strictly an administrative change that does not reduce or modify any existing safety requirement or procedure.

The proposed change does not create the possibility of a new or different kind of accident from an accident previously evaluated because no new accident scenario is created and no previously evaluated accident scenario is changed by relocating procedural requirements from one controlled document to another.

The proposed change does not involve a significant reduction in a margin of safety because no modification of any plant structure, system, component, or operating procedure is associated with this administrative change, so all safety margins remain unchanged.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

**Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin**

*Date of amendment request:* May 5, 1993

*Description of amendment request:* The proposed amendment would change the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications to satisfy commitments made by the licensee regarding NRC Generic Letter 90-06. This letter deals with Generic Issue 70 and Generic Issue 94, which focus on power-operated relief valve and block valve reliability and additional low-temperature overpressure protection. The proposed amendment includes restrictions on the restart of an inactive reactor coolant pump, modifications to the limiting conditions for operation of the pressurizer power-operated relief valves (PORVs) and associated block valves, modifications to the limiting conditions for operation for reactor coolant temperature and pressure, and provisions to ensure that adequate low-temperature overpressure protection (LTOP) is available. This amendment request supersedes the amendment request on the same subject that was submitted on May 9, 1991, and supplemented on June 26, 1991 and July 24, 1992. The previous amendment request was noticed on July 24, 1991 (56 FR 33962).

*Basis for proposed no significant hazards consideration determination:* 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:

(a) Reactor coolant pump starting prohibitions

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

LTOP is required in pressurized water reactors to provide protection against brittle fracture of the reactor pressure vessel. The licensing basis of the KNPP LTOP system assumes that the maximum temperature difference between the secondary side heat sink and the reactor coolant system cold leg will be less than or equal to 100°F when a reactor coolant pump is started. This proposed TS provides an additional control to ensure that the licensing basis of the LTOP system is satisfied. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure-temperature limits (proposed Figure TS 3.1-4) will not be exceeded due to an energy input event. Therefore, this proposed change does not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS provides an additional restriction to assure that the design basis of the KNPP LTOP system is met. Therefore, the proposed TS change would not allow the KNPP to operate outside of its design basis.

3) involve a significant reduction in the margin of safety.

This proposed TS change will not reduce the margin of safety. Rather, the proposed change provides an additional administrative control to ensure plant operation remains within the design basis of the LTOP system. Consequently, the likelihood of the KNPP experiencing a pressure transient due to an energy input event that challenges the LTOP system and the Appendix G pressure/temperature limits is reduced.

(b) Modifications to the limiting conditions for operation of the pressurizer PORVs and associated block valves

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an accident previously evaluated will not be increased by this TS

change. The accident of interest is a design-basis steam generator tube rupture (SGTR). The probability of a SGTR will not be increased as a result of providing an additional administrative control to ensure the availability of the pressurizer PORVs and block valves.

In addition, the consequences of an accident previously evaluated will not be increased by this TS change. The proposed change provides increased assurance that the pressurizer PORVs and block valves will be available to assist in the mitigation of a SGTR and thus limit the consequences of a SGTR.

2) create the possibility of a new or different kind of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS is for the purpose of providing reasonable assurance that the pressurizer PORVs and block valves are available when called upon to perform a function. Ensuring the availability of the PORVs and block valves will not alter the plant configuration, or plant performance.

3) involve a significant reduction in the margin of safety.

The margin of safety will not be reduced by this change to the Technical Specifications. This TS change increases the assurance that the pressurizer PORVs and block valves will be available when called upon to perform a function. Therefore, plant safety is enhanced and the risk to the health and safety of the public is reduced.

(c) Modifications to the limiting conditions for operation for reactor coolant temperature and pressure

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of RG 1.99 Regulatory Position C.2 does not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The probability of a LTOP event occurring is independent of the pressure temperature limits for the RCS pressure boundary. Therefore, the probability of a LTOP event occurring remains unchanged.

The use of predicted fluence values through the end of operating cycle 20 is appropriately considered within the calculations in accordance with standard industry methodology previously docketed under WCAP 13227. Revised flux values were used for Cycles 16, 17, and 18 based on actual core reload designs. All other flux values were taken from WCAP 12333.

The calculation of pressure temperature limits in accordance with approved regulatory methods provides assurance that reactor pressure vessel fracture toughness requirements are met and the integrity of the RCS pressure boundary is maintained.

The use of Regulatory Position C.2 and fluence values through EOC 20 meet previously established criteria for protection of the health and safety of the public. The consequences of a LTOP transient therefore, remain unchanged.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

The use of Regulatory Position C.2 and fluence through EOC 20 does not modify the reactor coolant system pressure boundary, nor make any physical changes to the LTOP setpoint or system design.

Therefore, no new failure mechanisms are created that could create the possibility of an accident of a new or different type.

3) involve a significant reduction in the margin of safety.

The appendix G pressure temperature limitations are calculated in accordance with regulatory requirements and calculational limitations specified in RG 1.99, Revision 2. RG 1.99 is an acceptable method for implementing the requirements of 10 CFR 50 Appendices G and H.

The revised calculations meet the NRC acceptance criteria for the LTOP setpoint and system design as described in NRC Safety Evaluation Report (SER) dated September 6, 1985, which concluded that "the spectrum of postulated pressure transients would be mitigated...such that the temperature pressure limits of Appendix G to 10 CFR 50 are maintained."

The use of Regulatory Position C.2, meets previously established criteria for the pressure temperature limits for the LTOP system and setpoint. Thus, the margin of safety as described in the NRC SER is not reduced.

(d) Operability requirements of the LTOP system

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

LTOP is required in pressurized water reactors to provide protection against brittle failure of the reactor pressure vessel. This proposed TS provides additional administrative assurance that LTOP will be available to mitigate a pressure transient event. The proposed TS is consistent with the design basis of the LTOP system. Consequently, this proposed TS provides increased assurance that the KNPP Appendix G pressure/temperature limits will not be exceeded during an overpressure event. Therefore, this proposed change will not increase the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different type of accident from an accident previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed TS is for the purpose of providing additional administrative assurance that LTOP will be available at the KNPP. The proposed TS is consistent with current plant practice regarding LTOP and will not alter the plant configuration or performance.

3) involve a significant reduction in the margin of safety.

This proposed TS change will not reduce the margin of safety. Rather, the proposed TS change provides an additional administrative control to ensure LTOP availability. Consequently, the likelihood of a pressure transient exceeding the KNPP Appendix G pressure/temperature limits at low temperatures is reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

*Attorney for licensee:* Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

*NRC Project Director:* John N. Hannon.

**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* June 17, 1993

*Brief description of amendment request:* The proposed amendment would change the Salem Nuclear Generating Station, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR), Section 4.3 and 15.3.5, relative to single rod control cluster assembly (RCCA) withdrawal events. The change would incorporate a new assumption that a potential single failure in the rod control system can cause misoperation of a single or multiple RCCAs and provides the necessary analysis to show continued

compliance with General Design Criterion (GDC) 25. As a result, the changes would reclassify the single RCCA withdrawal event from a Condition III event to a Condition II event. This reclassification would assume an increased frequency in the occurrence of the event, but would show that the fuel design limits would not be exceeded.

*Date of publication of individual notice in* **Federal Register:** June 29, 1993 (58 FR 34833)

*Expiration date of individual notice:* July 29, 1993

*Local Public Document Room location:* Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

**Notice of Issuance of amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, and at the local public document rooms for the particular facilities involved.

**Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station Units 1 and 2, Lake County, Illinois**

*Date of application for amendments:* March 11, 1993, as supplemented June 21, 1993

*Brief description of amendments:* The amendments modify the Technical Specifications in accordance with Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP)." The amendments implement the Generic Letter by relocating the procedural details of the current radioactive effluent and radiological environmental monitoring program and solid radioactive waste program to the offsite dose calculation manual and process control program, respectively; and incorporate related programmatic controls into the Administrative Controls section of the TS.

*Date of issuance:* June 29, 1993

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 146 and 134

*Facility Operating License Nos.* DPR-39 and DPR-48. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25853) The June 21, 1993, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut**

*Date of application for amendment:* April 30, 1993, as supplemented by letter dated May 26, 1993.

*Brief description of amendment:* The amendment modifies Technical Specification 3/4.8, "Electrical Power Systems," paragraph 4.8.1.1.2.b, to reflect a design change that would change the allowable elapsed time for the automatic load sequencer for the "backup" containment air recirculation fans to 5 minutes plus or minus 30 seconds from 48 seconds plus or minus 5 seconds. The amendment also makes two editorial changes to amend the wording of "Backup" to "Second Containment Recirc. Fan" and add "First" to the beginning of "Containment Recirc. Fan" on the previous line.

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993

*Amendment No.:* 160

*Facility Operating License No.* DPR-61. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30191) The May 26, 1993 submittal provided supplemental information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated June 28, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* June 27, 1991

*Brief description of amendment:* The amendment changed Technical Specifications (TS) 5.3.1.6 and 5.4.1.1 to increase the maximum allowable enrichment for future reload fuel from 3.5 to 4.1 weight percent uranium-235 (U-235). TS 5.4.1.1 was also revised to delineate the allowable storage positions in the fresh fuel rack. Additionally, "235U" is corrected to "U-235."

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993

*Amendment No.:* 166

*Facility Operating License No.* DPR-51. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 7, 1991 (56 FR 37580) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas**

*Date of application for amendment:* February 24, 1993

*Brief description of amendment:* The amendment changed the flow test acceptance criteria for a single pump in the high pressure safety injection (HPSI) system from a minimum of 196 gallons-per-minute (gpm) for each injection leg to a total flow of 570 gpm, excluding the highest injection leg's flow rate.

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993

*Amendment No.:* 148

*Facility Operating License No.* NPF-6. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 31, 1993 (58 FR 16859) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 28, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia**

*Date of application for amendments:* September 2, 1992

*Brief description of amendments:* The amendments would correct the reactor pressure vessel water level corresponding to the Top of Active Fuel for both units. The correct value is 6 inches higher than the value shown in TS Figure 2.1-1 for Unit 1 and Figure B 3/4 3-1 for Unit 2.

*Date of issuance:* July 1, 1993

*Effective date:* To be implemented no later than 60 days from the date of issuance

*Amendment Nos.:* 187 and 126

*Facility Operating License Nos.* DPR-57 and NPF-5. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 14, 1993 (58 FR 19480) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of application for amendment:* April 29, 1993

*Brief description of amendment request:* The amendments revise Technical Specification (TS) Definition 1.19, "Offsite Dose Calculation Manual," TS 3.11.1.4, "Liquid Holdup Tanks," TS 3.11.2.6, "Gas Storage Tanks," TS 6.9.1.4, "Semiannual Radioactive Effluent Release Report," and TS 6.14, "Offsite Dose Calculation Manual," to extend the Radioactive Effluent Release Report submittal frequency from semiannual to annual in accordance with the revised 10 CFR 50.36a.

*Date of issuance:* June 29, 1993

*Effective date:* June 29, 1993

*Amendment Nos.:* 52 and 41

*Facility Operating License Nos.* NPF-76 and NPF-80. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30196) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488.

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* May 1, 1992, as supplemented June 18, 1993.

*Brief description of amendments:* The amendments change the Technical Specifications (TS) in accordance with the guidance provided in Generic Letter (GL) 90-09. The changes revise the snubber visual inspection surveillance requirements in Unit 1 TS 3/4.7.8, Unit 2 TS 3/4.7.7, and their associated bases. The amendments also remove the Unit 1 and Unit 2 snubber components lists from TS Tables 3.7.4 and 3.7.9 of Unit 1 TS 3/4.7.8 and Unit 2 TS 3/4.7.7, respectively in accordance with the guidance contained in GL 84-13.

*Date of issuance:* July 9, 1993

*Effective date:* July 9, 1993

*Amendment Nos.:* 173 and 156

*Facility Operating License Nos.* DPR-58 and DPR-74. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 3, 1993 (58 FR 12261). The June 18, 1993, letter provided updated TS pages only and did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 9, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Maine Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* April 7, 1993

*Brief description of amendment:* This amendment increases the membership and quorum requirements of the Plant Operation Review Committee (PORC), to reflect current plant management positions, and adds three analytical methods to the list of analytical methods approved by the NRC for determining core operating limits.

*Date of issuance:* July 1, 1993

*Effective date:* July 1, 1993

*Amendment No.:* 139

*Facility Operating License No.* DPR-36: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 12, 1993 (58 FR 28057) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 1, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

**Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska**

*Date of amendment request:* February 25, 1992, as supplemented by letters dated June 9, 1992, and June 14, 1993.

*Brief description of amendment:* The amendment clarifies the performance criteria and surveillance requirements for the Cooper Nuclear Station DC power systems by adding new specifications and surveillance requirements, and by reformatting, to incorporate many features of the BWR/4 Standard Technical Specifications.

*Date of issuance:* July 7, 1993

*Effective date:* Within 30 days of the date of issuance.

*Amendment No.:* 164

*Facility Operating License No.* DPR-46. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** June 10, 1992 (57 FR 24673). The additional information contained in the supplemental letters dated June 9, 1992, and June 14, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota**

*Date of application for amendment:* December 31, 1992

*Brief description of amendment:* The amendment revises Technical Specification Surveillance Requirement 4.13.B.1.e, "Fire Suppression Water System," by changing the American Society for Testing and Materials (ASTM) standards which are to be followed when performing required sampling and analysis of the diesel fire pump fuel oil supply.

*Date of issuance:* June 29, 1993

*Effective date:* June 29, 1993

*Amendment No.:* 85

*Facility Operating License No.* DPR-22: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 28, 1993 (58 FR 25861) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* February 25, 1993, as supplemented by letter dated May 24, 1993

*Brief description of amendments:* These amendments modify the existing Limiting Conditions for Operation, surveillance requirements, and bases to reflect the new containment monitoring system hydrogen/oxygen analyzers. The new analyzers are to be installed in Unit 3 during the scheduled September 1993 refueling outage and will support the Containment Atmospheric Dilution (CAD) system and the Containment Atmospheric Control (CAC) system. The new requirements apply to the Unit 3 TS. The Unit 2 TS 3.7.A.6.c CAD requirements have been changed to eliminate a reference to "either" reactor.

*Date of issuance:* July 1, 1993

*Effective date:* As of startup of Unit 3 following refueling outage 3R09.

*Amendments Nos.: 177 and 180*

*Facility Operating License Nos.* DPR-44 and DPR-56: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** April 14, 1993 (58 FR 19486) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* March 9, 1993

*Brief description of amendment:* The amendment revises the Technical Specifications (TSs) to incorporate editorial changes, correct typographical errors, and adjust line spacing and text formats. In addition, the amendment deletes pertinent portions of the TSs that relate to exceptions that are no longer applicable. The amendment does not make any substantive changes to the TSs.

*Date of issuance:* June 29, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 190

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30198) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York**

*Date of application for amendment:* April 16, 1993

*Brief description of amendment:* The amendment modifies Technical Specification (TS) 4.12.F.1 to require a visual inspection of all fire barrier penetration seals for each protected area once per operating cycle, in lieu of once per 1.5 years. In addition, the modification deletes the footnote to TS 4.12.F.1 that was added under TS Amendment No. 177. The amendment, which allowed a one-time 3 month extension of the surveillance interval for visually inspecting the fire barrier penetration seals, is no longer applicable to the facility.

*Date of issuance:* July 7, 1993

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 191

*Facility Operating License No.* DPR-59: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30198) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1993.

No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of application for amendments:* August 27, 1991; supplemented November 6, 1992 (TS 91-09)

*Brief description of amendments:* The amendments incorporate various changes to the Technical Specifications related to the Containment Gas and Particulate Radiation Monitor System, the Containment Purge Air Radiation Monitor System, and the switches associated with a manual trip of the Containment Spray System and the Phase "B" Isolation System.

*Date of issuance:* June 25, 1993

*Effective date:* June 25, 1993

*Amendment Nos.:* Unit 1 - 168, Unit 2 - 158

*Facility Operating License Nos.* DPR-77 and DPR-79: Amendments revise the technical specifications.

*Date of initial notice in* **Federal Register:** October 2, 1991 (56 FR 49928).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 25, 1993.

No significant hazards consideration comments received: None

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

**TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas**

*Date of amendment requests:* May 14, 1993.

*Brief description of amendment:* The amendments revised the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2 Technical Specifications to extend the period for the removal of the operability requirements of the boron dilution mitigation system.

*Date of issuance:* June 28, 1993

*Effective date:* June 28, 1993, to be implemented within 30 days of issuance.

*Amendment Nos.:* 16 and 2

*Facility Operating License Nos.* NPF-87 and NPF-89: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 27, 1993 (58 FR 30827).

No significant hazards consideration comments received: No

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* November 10, 1992, and April 16, 1993

*Brief description of amendment:* The amendment revises the Technical Specification 3.9.7 to allow movement of the spent fuel transfer gates over the spent fuel pool during refueling activities, fuel handling system maintenance and transfer gate seal replacement.

*Date of issuance:* June 29, 1993

*Effective date:* June 29, 1993

*Amendment No.:* 81

*Facility Operating License No.* NPF-30. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 12, 1993 (58 FR 28061) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 1993.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

**Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas**

*Date of amendment request:* November 5, 1992

*Brief description of amendment:* The amendment modifies Technical Specification 4.2.1.1 associated with monitoring and logging of axial flux difference (AFD). The change eliminates the increased monitoring frequency following the restoration of the AFD monitor alarm and the increased monitoring and logging frequency (to once per 30 minutes) associated with the alarm being inoperable for greater than 24 hours.

*Date of issuance:* July 7, 1993

*Effective date:* July 7, 1993

*Amendment No.:* 64

*Facility Operating License No.* NPF-42. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 23, 1992(57 FR 61123). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 1993

No significant hazards consideration comments received: No.

*Local Public Document Room Locations:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 14th day of July 1993.

For the Nuclear Regulatory Commission.

**Jack W. Roe,**

*Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation.*

[Doc. 93-17185 Filed 7-20-93; 8:45 am]

BILLING CODE 7590-01-F

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-32633; File No. SR-CBOE-93-24]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Telephones Located on the Floor of the Exchange

July 14, 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 June 7, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. 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 CBOE proposes to treat as a rule of the Exchange the conditions governing the use of member-owned and Exchange-owned telephones located at equity option trading posts on the floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

### 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 CBOE 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 CBOE 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*

The purpose of the proposed rule change is to incorporate into the rules of the Exchange the conditions recently imposed by the Exchange as governing the use of member-owned and Exchange-owned telephones located at equity option trading posts on the floor of the Exchange. Exchange Rule 6.23 prohibits members from establishing or maintaining any telephone or other wire communications between their offices and the Exchange floor, and it authorizes the Exchange to direct the discontinuance of any communication facility terminating on the Exchange floor. Pursuant to this Rule, prior to October 1992 the Exchange did not permit any telephones at equity option posts on the trading floor, other than at posts where a Designated Primary Market-Maker had been appointed, and other than intercom telephones connecting the floor with other locations within the Exchange, but

incapable of making or receiving outside calls.

In October 1992, the Exchange determined to modify its policy to permit the installation of both Exchange-owned and member-owned telephones at equity option posts on the trading floor, and it promulgated Information Circular IC92–118 ("Circular") to inform the membership of this new policy and the fees, charges, and conditions associated with the use of such telephones.[1] At the time it issued the Circular, the Exchange determined that the conditions applicable to the use of floor telephones would not be treated as rules of the Exchange, and accordingly would neither impose surveillance obligations on the Exchange nor subject members to formal disciplinary proceedings for violations. Instead, the Exchange treated these conditions as requirements that would have to be satisfied if the Exchange were to continue to permit telephones to be located on the equity option trading floor.

Now that the Exchange has had several months of experience with floor telephones, it proposes to incorporate into its rules those conditions set forth in the Circular as applying to the use of telephones at equity options trading posts. Specially, these conditions are the following:

1. There will be no restrictions on where a Member may call.
2. Floor telephones may not be used to receive orders, although they may be used to provide quotations.
3. Members may give their clerks their personal identification number ("PIN") access codes. Although both Members and clerks may use the post telephones, Members will have priority. Liability for all calls made using a Member's PIN access code will be that of the Member.
4. Stock clerks will not be permitted to establish a base of operations utilizing post telephones.
5. Members and their clerks using the telephones consent to the Exchange requiring that any telephone or line be subject to tape recording.
6. The telephones will be used for voice service only. Data (PC's fax, etc.) will remain subject to Exchange consent under a separate program.
7. Cellular or portable telephones may not be used on the trading floor.
8. Telephone headsets may not be used on the equity options floor.

Upon the approval of these conditions as rules of the Exchange, the Circular will be republished as a Regulatory Circular in order to inform members that these conditions are rules, and that violations may lead to disciplinary proceedings.

The Exchange believes it is now appropriate to treat these conditions as Exchange rules in order to be able to utilize both informal and formal disciplinary proceedings and sanctions to promote compliance. In the case of the prohibition against telephoned orders, the Exchange believes that it is important that orders be entered through properly registered persons at member firms that are specifically qualified to do a public customer business, so that all of the investor protection and safeguards embodied in Exchange customer protection rules may apply. By restricting floor telephones to hard-wired devices only and not allowing cellular, portable or headset telephones, the Exchange believes it will better be able to monitor and control telephone usage on the floor. In addition, the Exchange believes that currently available technology would not permit a large number of portable or cellular telephones to be used in the environment of the trading floor without significant deterioration or interruption of service.

The Exchange intends to police compliance with these conditions by means of customary floor surveillance procedures, including reliance on surveillance by floor officials and Exchange employees. However, the Exchange does not intend to monitor or record incoming or outgoing telephone calls. The Exchange believes that recording or monitoring calls raises serious questions of legality under Illinois law, as well as other significant privacy issues. Further, the Exchange does not believe that it would be cost effective to monitor what could well amount to thousands of hours of telephone conversations annually, when reliance on customary floor surveillance procedures and self-policing by members should be sufficient to identify significant rule violations.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that they are designed to improve communications to and from the Exchange's equity options trading floor in a manner that promotes just and equitable principles of trade, perfects the mechanism of a free and open market, and protects investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any 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 date of 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 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 such 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. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–24 and should be submitted by August 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

[1] Fees and charges applicable to the use of telephones located at equity option trading posts on the floor of the Exchange were filed on February 23, 1993, and June 10, 1993. See Securities Exchange Act Release No. 32463 (June 15, 1993), 58 FR 33850, and Securities Exchange Act Release No. 32515 (June 25, 1993), 58 FR 35990.

[2] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
*Deputy Secretary.*
[FR Doc. 93–17230 Filed 7–20–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32631; File No. SR–MSE–93–10]

## Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to the Permanent Approval of SuperMAX and a Two-Tiered Fill-Size Parameter for SuperMAX Issues

July 14, 1993.

On May 5, 1993, the Midwest Stock Exchange, Inc. ("MSE")[1] filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSE–93–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1a] The purpose of the proposal is to establish the MSE's Super MAX system on a permanent basis and to amend the current SuperMAX "fill-size" parameters for eligible issues by establishing a two-tiered system for SuperMAX fills. Notice of the proposal appeared in the Federal Register on June 23, 1993.[2] The Commission has received no comments on the proposal. For the reasons discussed below, the Commission is granting accelerated approval to the proposal.

### I. Description

The purpose of the rule change is to permanently approve the Exchange's SuperMAX system[3] on a voluntary basis and to raise the "fill size" parameters for certain SuperMAX issues by establishing a two-tiered system for SuperMAX fills. The two-tiered system will consist of: (1) The top 500 most actively traded issues, which will have an increased fill size parameter set at 1099 shares; and (2) all other issues, which will continue at the current fill size parameter of 599 shares.

SuperMAX, which is currently operating as a pilot program, provides that the execution price of small agency market orders received over the Midwest Automated Execution System (MAX) may be automatically improved from the consolidated best bid or offer according to certain pre-defined criteria. The Exchange seeks Commission approval of SuperMAX on a permanent basis while continuing to operate SuperMAX as a voluntary system, by specialist, on a stock by stock basis.

MAX executes agency market orders through the SuperMAX program without any specialist intervention based upon the following criteria:

(1) Both buy and sell orders in market quoted with a minimum variation (⅛th spread or orders which do not meet the criteria in 2 or 3 below) will be executed based upon the consolidated best bid or offer.

(2) Buy orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best offer if (a) an execution at the consolidated best offer would create a double up-tick based upon the last sale in the primary market or (b) an execution at the consolidated best offer would result in a greater than a ⅛th price change from the last sale in the primary market.

(3) Sell orders in markets quoted with more than ⅛th spread will be executed at a price ⅛th better than the consolidated best bid if (a) an execution at the consolidated best bid would create a double down-tick based upon the last sale in the primary market or (b) an execution at the consolidated best bid would result in a greater than a ⅛th price change from the last sale in the primary market.

For example, the execution price for a market buy order in a ¼–½ quoted market is as follows:

| Tick/last sale | Execution price |
|---|---|
| +½ | ½ |
| +⅜ | ⅜ |
| −⅜ | ½ |
| −¼ | ⅜ |
| +¼ | ⅜ (if in range) |

The execution price for a market buy order in a ¼–⅝ quoted market, is as follows:

| Tick/last sale | Execution price |
|---|---|
| +⅝ | ⅝ |
| +½ | ½ |
| +⅜ | ½ |
| −½ | ⅝ |
| −⅜ | ½ |
| −¼ | ½ |
| +¼ | ½ |

The execution price for a market sell order in a ¼–½ quoted market, is as follows:

| Tick/last sale | Execution price |
|---|---|
| −¼ | ¼ |
| −⅜ | ⅜ |
| +⅜ | ¼ |
| +½ | ⅜ |

Any eligible order in a stock included in SuperMAX which is manually presented at the specialist post by a floor broker must also be guaranteed an execution by the specialist pursuant to the above listed criteria. In the event that a contra side order which would better a SuperMAX execution is presented at the post, the incoming order which is executed pursuant to the SuperMAX criteria must be adjusted to the better price.

SuperMAX will operate during the trading day from 8:30 a.m. (CST) until the close. During volatile periods, individual stocks or all stocks may be removed from SuperMAX with the approval of two members of the Committee on Floor Procedure.

In support of its request seeking permanent approval, and consistent with the Commission's interest in receiving information regarding SuperMAX, the Exchange's Specialist participation in SuperMAX is approximately 80 percent for the 900 issues traded over the SuperMAX system, or about 40 percent of the total issues traded on the Exchange. While the Exchange cannot provide historical information regarding the number of times an execution is bettered through SuperMAX, there is never an instance where SuperMAX provides an inferior fill to a regular MAX execution. However, when a market is quoted with a one quarter point spread, or more, and an execution would result in a double up-tick or double down-tick, or in an execution more than ⅛ point away from the last sale, customers receive price improvement 100% of the time.[4]

### II. Discussion

The Commission finds that approval of the proposed change is consistent

[1] On July 8, 1993, The Midwest Stock Exchange formerly changed its name to the Chicago Stock Exchange. For purposes of convenience and consistency, the old name and acronym are used in this order.

[1a] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 32484 (June 16, 1993), 58 FR 34112.

[3] The Exchange initially established SuperMAX as a pilot program on May 14, 1990. See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20990 (order approving SR–MSE–90–05). The Exchange initially sought permanent approval for SuperMAX in its filing SR–MSE–90–17; however, that request was held in abeyance while the Exchange operated both the SuperMAX and the Enhanced SuperMAX pilot programs. The pilot program for Enhanced SuperMAX expired on April 14, 1993. The Exchange did not seek permanent approval for enhanced SuperMAX at any time, nor does it seek permanent approval here.

[4] For example, if the market in ABC stock is ¼–½ with the last sale at ⅜ on an uptick, and an agency market order is received to buy 200 shares of ABC at the market, the order would automatically be filled at ⅜.

with Sections 6 and 11A of the Act, in that it will promote just and equitable principles of trade, perfect the mechanism of a free and open market and a national market system and in general, further investor protection and the public interest, as well facilitate the practicability of brokers executing investors' orders in the best market, and finally, contribute to the best execution of such orders.

Permanent approval of SuperMAX will allow for small agency market orders to receive an execution at a price that may be better than the consolidated best bid or offer according to certain predefined criteria. The automated execution feature of SuperMAX provides a much more efficient means of bettering the execution price on a large volume of machine delivered market orders than manual processing could. The execution criteria of SuperMAX also contributes to an orderly market because they help to reduce variations from trade to trade on small volume.

By increasing the fill size parameters for SuperMAX issues in the top 500 most actively traded issues to 1099 shares (while keeping the fill size for other SuperMAX issues at 599), a larger universe of agency market orders are eligible for SuperMAX executions. Because SuperMAX allows for small agency market orders to be guaranteed an execution at a price that is better than the consolidated best bid or offer according to certain pre-defined criteria, this change works to increase the number of agency market orders that could benefit from better price executions through SuperMAX.

The Commission finds good cause for approving the proposed rule change on an accelerated basis prior to the thirtieth day after the date of publication of the notice of filing thereof in that the pilot program under which SuperMAX is currently operating is set to expire on July 15, 1993.[5] Accelerated approval will permit the MSE to continue using SuperMAX without interruption.

### III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule is consistent with the Act and the rules and regulations thereunder applicable to the MSE and in particular, Sections 6 and 11A of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule relating to the SuperMAX system be, and hereby is, approved.

[5] See Securities Exchange Act Release No. 32407 (June 3, 1993), 58 FR 32554.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17291 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–32639; File No. SR–NASD–92–51]**

## Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Enforcement of Arbitrators' Orders Under the NASD Code of Arbitration Procedure

July 15, 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 December 2, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") and amended on June 11, 1993[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is herewith filing a proposed rule change to Part I, Section 1 and Part II, Sections 8 and 9 of the NASD Code of Arbitration Procedure ("Code"). Below is the text of the proposed rule change. Proposed new language is in italics, proposed deletions are in brackets.

Code of Arbitration Procedure

Part I—Administrative Provisions

Matters Eligible for Submission

Sec. 1. This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(3) of the By-Laws of the National Association of Securities Dealers, Inc., (the Association) for the arbitration of any dispute, claim or controversy arising out of or in connection with the business of any member of the Association, *or arising out of the employment or termination of employment of associated person(s) with any member*, with the exception of disputes involving the insurance business of any member which is also an insurance company:

(1) between or among members;

*(2) between or among members and associated persons;*

[2] *(3)* between or among members *or associated persons* and public customers, or others; and

[3] *(4)* between or among members, registered clearing agencies with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures, and participants, pledgees or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency.

* * * * *

Part II—Industry and Clearing Controversies

Required Submission

Sec. 8. (a) Any dispute, claim or controversy eligible for submission under Part I of this Code between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated persons(s), *or arising out of the employment or termination of employment of such associated person(s) with such member*, shall be arbitrated under this Code, at the instance of:

(1) A member against another member;

(2) A member against a person associated with a member or a person associated with a member against a member; and,

(3) A person associated with a member against a person associated with a member.

(b) Unchanged.

Composition of Panels

Sec. 9. (a) *In disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes, or receipt of commissions, the panel of arbitrators shall be appointed as provided by Sections 9(b)(i), (b)(ii) or 10 of the Code, whichever is applicable. In all other disputes arising out of the employment or termination of employment of an associated person, the panel of arbitrators shall be appointed as provided by Section 13 or 19 of the Code, whichever is applicable.*

[1] Amendment No. 1 to SR–NASD–92–51 was filed on February 9, 1993 to modify the rule language of Section 9(a) to Part II of the Code of Arbitration Procedure to delete a reference to disputes claiming "wrongful discharge." Amendments No. 2 and 3 were filed on May 18, 1993 and June 11, 1993 respectively, to amend Part I, Section 1 of the Code to clarify the applicability of the Code to employment related disputes.

[(a)] *(b) (i)* Except as otherwise provided in Section *9(a) or* 10 of the Code, in all arbitration matters between or among members and/or persons associated with members, and where the amount in controversy does not exceed $30,000, the Director of Arbitration shall appoint a single arbitrator to decide the matter in controversy. The arbitrator chosen shall be from the securities industry. Upon the request of a party in its initial filing or the arbitrator, the Director of Arbitration shall appoint a panel of three (3) arbitrators, all of whom shall be from the securities industry.

[(b)] *(ii)* In all arbitration matters between or among members and/or persons associated with members and where the amount in controversy exceeds $30,000, a panel shall consist of three arbitrators, all of whom shall be from the securities industry.

* * * * *

**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 NASD 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 NASD 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*

(a) The NASD is proposing to amend Section 1 of Part I and Sections 8 and 9 of Part II of the Code to clarify that employment-related disputes are arbitrable under Section 8, and to provide that in cases involving employment discrimination claims or claims involving public policy issues, the panel should consist of a majority of public arbitrators.

The NASD is proposing to amend Section 1 of the Code to provide that disputes, claims or controversies arising out of the employment or termination of employment of an associated person are eligible for submission to arbitration. A parallel rule change is also proposed to Section 8, which addresses industry and clearing controversies that are required to be submitted to arbitration. In addition, the NASD is proposing to amend Section 1 to clarify that disputes between or among members and associated persons are eligible for submission to arbitration under the Code. These changes are intended to assure that the arbitration of industry employment disputes may be compelled at the instance of one of the parties to the dispute.

The NASD is also proposing to amend Section 1 to clarify that disputes between or among associated persons and public customers are eligible for submission to arbitration.

Section 9(a) is also proposed to be amended to provide that, in disputes subject to arbitration that arise out of the employment or termination of employment of an associated person, and that relate exclusively to disputes involving employment contracts, promissory notes, or receipt of commissions, the panel of arbitrators shall be made up of industry arbitrators as provided by Sections 9(b)(i), (b)(ii) or 10 of the Code. In all other instances,[2] which would normally include claims of employment discrimination on the basis of age, sex or race, or relating to sexual harassment, the panel of arbitrators would be chosen under Section 13 or 19, whichever is applicable. This would result in a panel with a single public arbitrator or a majority of public arbitrators. The NASD's action in proposing this rule change is not meant to indicate that industry panels have not fairly handled these cases, but is rather intended to recognize the public policy implications of such cases.

The proposed rule change to Sections 1 and 8 was prompted by a decision of the California Court of Appeals, *Higgins* v. *The Superior Court of Los Angeles County*, (Cal. App. Oct. 8, 1991), review denied and decision ordered not officially published, 1 Cal.Rptr. 2d 57 (1992), in which the court held that the NASD's Section 8 language did not cover employment disputes, but only covered disputes arising out of or in connection with business transactions. The court distinguished prior case precedent, including *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U.S. _____, 111 S. Ct. 1647, 114 L.Ed 2d 26 (1991), which compelled arbitration of an age discrimination claim before the New York Stock Exchange (NYSE). The court found dispositive the difference between the language of Section 8 and the NYSE rule governing industry disputes. NYSE Rule 347 requires arbitration of "[a]ny controversary between a registered representative and any member of member organization arising out of the employment or termination of employment of such registered representative." The NASD has taken the position that employment disputes are arbitrable under Section 8, but in order to clear up any ambiguity, it is proposing the changes described above, which parallel the NYSE rule language.

With regard to the proposed change to Section 9(a), securities industry panels are currently utilized in all claims involving the employment or termination of employment of associated persons. The staff of the NASD's Arbitration Department strives to select a balanced panel that might include an arbitrator involved in management, a registered representative, and an attorney who devotes a substantial portion of his or her work effort to securities industry clients. On occasion, the parties will stipulate to one or more public arbitrators on the panel, depending on the subject matter of the claim. The NYSE, by contrast, considers associated persons to be non-members, and thus requires that they be assigned a panel with a majority of public arbitrators, unless they request an industry panel.[3]

The NASD has determined that in certain types of disputes, involving employment contracts, promissory notes, receipt of commissions and wrongful discharge, the issues relate to industry practice and require industry experience. In other disputes, involving public policy issues such as employment discrimination and sexual harassment, there is less need for an industry panel and the interests of the parties may be better served by a panel consisting of a majority of public arbitrations.

(b) The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] in that the proposed rule change will facilitate the arbitration process in the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[2] The NASD clarified in Amendment No. 1 to the proposed rule change that where a claim of wrongful discharge contains allegations that would indicate violations of any federal, state or local anti-discrimination law, the NASD intends that such claims be heard by a panel with a majority of public arbitrators.

[3] See NYSE Rules 607(a)(1) and 632.

[4] 15 U.S.C. 78o–3.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 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 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 self-regulatory organization consents, the Commission will:

A. By order approve such 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17290 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–32632; File No. SR–NASD–90–30]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Close-Out Requirements for Short Sales and an Interpretation on Prompt Receipt and Delivery of Securities

July 14, 1993.

**I. Introduction**

On May 23, 1990,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change adds section 71 to the NASD's Uniform Practice Code ("Code") to set forth a new requirement to close-out short sales in Nasdaq securities that meet a certain short position threshold. In addition, the proposal amends the NASD Board of Governors' Interpretation on Prompt Receipt and Delivery of Securities ("Interpretation")[4] to set forth examples of "bona fide fully hedged" and "bona fide fully arbitraged" for the purposes of exemptions from various short sale requirements. Set out in the Appendix to this Order is the text of the rule change, as amended. Additions to the rule appear in italics.

Notice of the proposed rule change appeared in the **Federal Register** on July 16, 1990.[5] The Commission received eight letters from four commentators addressing the rule change,[6] the substance of which is discussed below. This order approves the proposed rule change, as amended.

**II. Background**

In July 1986, the NASD issued a report detailing a study of short selling practices in the over-the-counter ("OTC") securities market ("Pollack Study").[7] As a result of recommendations contained in the Pollack Study, the NASD has taken a number of regulatory initiatives regarding short selling. The NASD now requires members to mark all sale transactions either "long" or "short,"[8] requires members to make an affirmative determination that they will receive delivery of a security from a customer or that they can borrow a security on behalf of a customer prior to accepting a short sale from a customer,[9] requires a member to make an affirmative determination that it can borrow the security before effecting a short sale for its own account (certain transactions in corporate debt securities, bona fide market making activities and fully hedged or arbitraged positions are exempt);[10] imposes mandatory buy-in requirements for cash or guaranteed delivery for Nasdaq securities where the buyer is a customer other than another NASD member, upon failure of a clearing corporation to effect delivery pursuant to a buy-in notice:[11] and requires members to report, as of the 15th of each month, aggregate short positions in all customer and proprietary accounts in securities

[1] On September 11, 1991, the NASD submitted Amendment No. 1 to the proposed rule change. On January 3, 1992, the NASD withdrew Amendment No. 1 and provided substitute Amendment No. 1. Substitute Amendment No. 1, which is a technical amendment, clarifies the language contained in the examples of "bona fide fully hedged" and "bona fide fully arbitraged" and states that the examples provided are for illustrative purposes and are not intended to limit the NASD's ability to determine the proper scope of those terms.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1922).

[4] NASD Manual, Rules of Fair Practice, Art. III, Sec. 1, (CCH) ¶2151.04.

[5] See Securities Exchange Act Release No. 28192, July 10, 1990, 55 FR 28972.

[6] Letter from Thomas J. Jennings, to Katherine England, Branch Chief, OTC Regulation, SEC, dated June 27, 1990; Honorable Doug Barnard, Jr., Chairman, Congress of the United States, House of Representatives, Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, to Hon. Richard Breeden, Chairman, SEC, dated March 26, 1991; Honorable Doug Barnard, Jr., Chairman, Congress of the United States, House of Representatives, Commerce, Consumer, and Monetary Affairs Subcommittee of the Committee on Government Operations, to Jonathan Katz, Secretary, SEC, dated March 27, 1991; Robert A. Mackie, R.A. Mackie & Co., Inc., to Lewis Antone, Division of Market Regulation, SEC, dated November 20, 1991; Robert A. Mackie, R.A. Mackie & Co., Inc., to Katherine England, Branch Chief, OTC Regulation, SEC, dated February 16, 1992; E.E. Geduld, President, John E. Herzog, Chairman/CEO, Herzog, Heine, Geduld, to Katherine England, Branch Chief, OTC Regulation, SEC dated May 6, 1992; Robert A. Mackie, Allen & Co., Inc., to Katherine England, Branch Chief, OTC Regulation, SEC, dated June 9, 1992; and E.E. Geduld; President, John E. Herzog, Chairman/CEO, Herzog, Heine, Geduld, to Katherine England, Branch Chief, OTC Regulation SEC, dated August 14, 1992.

[7] I. Pollack, Short-Sale Regulation of Nasdaq Securities (July 1986).

[8] Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31865 (September 5, 1986). NASD Manual, Rules of Fair Practice, Art. III, Sec. 21(b)(i), (CCH) ¶2171.

[9] Securities Exchange Act Release No. 23572 (August 28, 1986), 51 FR 31865 (September 5, 1986). NASD Manual, Rules of Fair Practice, Art. III, Sec. 1, Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities, (CCH) ¶2151.04.

[10] Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703 (July 12, 1990).

[11] Securities Exchange Act Release No. 26694 (April 4, 1989), 54 FR 14404 (April 11, 1989). NASD Manual, Uniform Practice Code, Sec. 59, (CCH) ¶3559.

included on Nasdaq.[12] In addition, the NASD has proposed a rule change that would prohibit short sales of Nasdaq/National Market System securities at or below the current inside bid when that bid is lower than the previous inside bid.[13]

In addition to the changes mentioned above, the Pollack Study recommended that the NASD address the fail-to-deliver/fail-to-receive[14] problem created by naked short selling.[15] The Pollack Study indicated that the lack of an automatic mechanism for preventing the build-up of short positions at clearing corporations carried the potential for serious problems, especially in times of market stress.[16] As a result of the recommendations contained in the Pollack Study, the NASD proposed to its membership that it adopt a mandatory buy-in requirement for all transactions that were not settled within a certain numbers of days.[17] Overwhelming negative comment led the NASD to recast the proposal to require members to close-out short sales in certain securities.

## III. Description of the Rule Change

New section 71 of the Code requires the short seller's broker to close-out a short sale of specific securities ten days after the normal settlement date if delivery of securities has not occurred and an exemption from the close-out requirement is not warranted. Securities subject to the close-out requirement are those that the NASD determines have an aggregate "clearing" short position of 10,000 shares or more that equals or exceeds one half of one percent of the total shares outstanding. The NASD will identify these securities daily based on data from the National Securities Clearing Corporation ("NSCC") and will compile a "restricted list,"[18] meaning that any subsequent short sale transaction not completed by delivery of shares within the prescribed time frames will be subject to mandatory close-out if a "fail-to-deliver" situation exists ten days after normal settlement date.

The rule applies to customer and proprietary short sales, but exempts "bona fide" market making activities and short sales in which the resulting position is "bona fide" fully hedged or arbitraged.[19] For example, the close-out rule applies if a broker-dealer sells a restricted security short from its proprietary account to another broker-dealer and fails to deliver the security within 10 days of normal settlement date. The rule also applies if the firm makes the same transaction for a customer.[20] However, if the short sale is part of a bona fide market making transaction, the firm is exempt from the close-out requirement. Any short sale of a restricted security that results in a position that is fully hedged or fully arbitraged, also is exempt from the mandatory close-out requirement.[21]

## IV. Comment Letters

As noted above, four commentators addressed the proposal, three of whom were critical of the rule change in some respect.[22] One commentator expressed concern that the proposal did not go far enough in addressing potential problems associated with short sales and suggested that the rule should be broadened to cover more securities and apply, without exceptions, when unsettled trades in a security exceed certain nominal thresholds. This reflected a concern about widespread naked short selling of Nasdaq issues in violation of NASD rules that resulted in persistent open clearing positions. This commentator also expressed concern that the rule change could be evaded easily because the exemption for hedged transactions did not prevent the investor from later selling the assets that hedged the short sale transactions and two persons could arrange periodic trades to cover short positions temporarily.

In response,[23] the NASD stated that there are many reasons why certain securities have unsettled trades at clearing corporations for lengthy periods, which may be completely unrelated to short selling, such as a member firm's segregation requirements under Rule 15c3–3 of the Act,[24] transfer delays or some characteristic of the security that prevents delivery.[25] The NASD concluded that nearly all stocks that develop large, persistent fails-to-deliver conditions at clearing corporations would be covered by the close-out rule because the rule focuses on persistent rather than temporary fail-to-deliver situations.

In response to concerns regarding possible evasion of the rule by selling assets used to hedge an exempted short position, the NASD indicated that hedged positions accounted for less than 2% of the total shares of reported short interest in the stocks covered by its analysis. The NASD further indicated that any evasion of the rule will be monitored by its Market Surveillance Department and that violations of short sale rules in the past have been the subject of disciplinary action by the Market Surveillance Committee. In conclusion, the NASD stated that the close-out rule would add substantially to the ability of the NASD to eliminate naked short selling as a regulatory problem and would address the few cases in which the potential effects of unsettled trades may create regulatory or market concern.

The remaining commentators expressed concern that the exemption from the close-out rule for warrant hedging is unnecessarily restrictive.[26]

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[12] Securities Exchange Act Release No. 23855 (December 1, 1986), 51 FR 44170 (December 8, 1986). NASD Manual, Rules of Fair Practice, Art. III, Sec. 41, (CCH) ¶2200A.

[13] Securities Exchange Act Release No. 31003 (August 6, 1992), 57 FR 36421 (August 13, 1992), providing notice of File No. SR–NASD–92–12. Securities Exchange Act Release No. 31729 (January 17, 1993), 58 FR 5791 (January 22, 1993), providing notice of Amendment No. 3. The proposal also contains an exemption for "qualified" market makers.

[14] In fail-to-deliver or fail-to-receive transactions the normal clearance and settlement process is interrupted by a failure to either receive or deliver the security in question.

[15] Pollack Study at 69.

[16] Id.

[17] NASD Notice to Members 89–56 (August 1989).

[18] Nasdaq Level 2 and Level 3 subscribers with Workstations will see a short sale restriction indicator on their bid/ask screens.

[19] The proposal includes guidelines for the use of the exemption from short sale requirements for bona fide fully hedged and arbitraged transactions provided in new Section 71 and in Section 2(b) of the Interpretation. According to the NASD, the guidelines are for illustrative purposes and are not intended to limit the NASD's ability to determine the scope of the terms "bona fide fully hedged" and "bona fide fully arbitraged." See File No. SR–NASD–90–30, substitute Amendment No. 1, filed January 3, 1992.

[20] The broker-dealer firm that enters a short sale transaction in a restricted security on behalf of a customer is obliged to inform that customer of the mandatory close-out requirement. Even if the security is subsequently dropped from the restricted list, the trade must be closed-out. On the other hand, if the security is placed on the list after the trade is executed, close-out would not be required.

[21] See Appendix for examples of what constitutes a "bona fide fully hedged" or "bona fide fully arbitraged" position.

[22] The letter received from Thomas Jennings supported the rule change and suggested additional ways in which the NASD could limit abusive short selling.

[23] Letter from John E. Pinto, Jr., Executive Vice President, Compliance, NASD, to the Honorable Douglas Barnard, Jr., Chairman, Commerce, Consumer & Monetary Affairs Subcommittee of the Committee on Government Operations, dated August 2, 1991.

[24] 17 CFR 240.15c3–3 (1992).

[25] The NASD undertook an analysis of the factors affecting fails-to-deliver to the NSCC and the fluctuations in such fails-to-deliver. The NASD's analysis indicated that when fails-to-deliver develop in stocks at NSCC, the dominant reasons are high average daily volume and (inversely related) the amount of float in the security. The NASD's analysis further suggested that the existence of fails-to-deliver at NSCC confirms little or nothing about short sales, unless the fail-to-deliver condition is large and persistent.

[26] The guideline regarding warrants states that the following transaction will be considered bona fide fully hedged and, therefore, exempt from the close-out requirement, "Short a security and long a

Continued

One commentator noted that implementation of the proposal in its present form will result in severely curtailing a generally beneficial trading activity and that the proper relief should allow one who is long warrants to short a number of common shares that is equal to the number of common shares into which the warrants are exercisable regardless if the warrants are in or out of the money and would prevent some hedges that were "bullish."[27] Another commentator noted that while the rule does not affect bona fide market making activity, the overall effect would be to shrink activity in warrant/common hedging situations which could diminish depth and reduce liquidity.[28]

In response to these comments, the NASD stated that the modification proposed by the commentators would create a "substantial loophole in the rule."[29] The NASD believes that the transactions envisioned by the commentators would enable short selling without the need to close-out transactions under the rule. "A warrant price near zero would permit virtually unlimited short selling, with no delivery requirement."[30] The NASD acknowledged that normally the number of shares necessary to establish a hedge could be determined by calculating a hedging ratio. The NASD, however, stated that the reason a hedge ratio was not proposed for the instant rule change is that the NASD expects that only about 80–90 securities will be subject to the rule on a given date, and that the stocks that are subject to the rule are for the most part thinly-traded, making calculation of a hedging ratio exceedingly difficult and imprecise. In addition, the NASD stated that basing the exemption on a hedging ratio would severely complicate the ability to surveil compliance with the rule and would raise the cost of both compliance by member firms and surveillance by the NASD. The NASD stated that the rule is an attempt to balance the need to require delivery of the class of securities meeting the requirements of the rule with the "desirable warrant hedging function."[31]

## V. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD. Specifically, the Commission believes that the proposed rule change is consistent with the requirements of section 15A(b)(6) of the Act.[32] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent manipulation of the marketplace, to promote just and equitable trading rules and to protect investors and the public interest. As mentioned in the Pollack Study, the fail-to-deliver/fail-to-receive problem has the potential for causing serious difficulties in a lengthy bear market. Where unsettled trades become extreme in size, market mechanisms can be disrupted. Public customers' reasonable expectations that their securities have been delivered should be met. Additionally, naked short selling can present substantial manipulative concerns. While naked short sellers must deposit margin with either their broker-dealer or with a clearing corporation, they enjoy great leverage than if they were required to close-out their short positions within a reasonable time frame. The ability of naked short sellers to employ this leverage to effect "bear raids" supports the NASD's decision to impose additional discipline on naked short selling via a close-out requirement. Therefore, the Commission believes that the instant rule change will assist in preventing manipulation of Nasdaq securities through excessive naked short selling. As originally recommended in the Pollack Study, a buy-in or close-out requirement will add to the stability of the marketplace by assuring that securities are available to cover short positions, especially in times of volatility. Such a requirement also will help enhance the integrity of the Nasdaq market. In addition, the close-out rule may help to prevent short selling abuses that have the potential to harm investors and the public interest.

As noted above, the rule contains an exception for bona fide market making transactions. The Commission believes that for the qualifier "bona fide" to have any substance, it must mean more than the fact that the transactions in question are effected in a market making account. At a bare minimum, to qualify for the exception, a market maker's short selling activity must be reasonably related to its market making activities.[33] In addition, the Commission believes that a bona fide market maker is a broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.[34] Accordingly, the Commission expects the NASD to monitor closely use of the exception for bona fide market making transactions.

The Commission believes that the NASD's guidelines for the warrant hedging exemption strike an appropriate balance between allowing some hedging without providing a means to undermine the close-out rule. Although the warrant hedging guideline may not provide the optimal formula for matching long warrants with the short underlying common stock, the Commission believes that the NASD has demonstrated that the solution proposed by the commentators may undermine the efficacy of the close-out rule in warrant hedging transactions. In addition, the Commission believes the NASD's representation that the use of an appropriate "ratio" to determine the proper balance between the short common stock and the long warrants would be unduly burdensome on both the NASD and its member firms. The set of securities subject to the close-out provision may change on a daily basis making application of a hedge ratio difficult. In addition, use of a hedge ratio would make surveillance for compliance with the rule unnecessarily complicated.

In sum, the Commission believes that the NASD's proposal is a measured step in regulating short sales in Nasdaq securities and that the NASD has struck an appropriate balance is designing the rule by focussing on those securities that have persistently large, unsettled short trades. Commentators urged or implicitly suggested that the NASD either has gone too far or not far enough in requiring members to close-out open short trades as a means of reducing large short positions in Nasdaq securities. The Pollack study suggests that the most egregious concerns involve securities

position in warrants or rights which are exercisable within 90 days into the short security. To the extent that the long warrants or rights are 'out of the money,' then the short position shall be exempt up to the *market value* of the long warrants or rights" (emphasis added).

[27] Letter from Robert A. Mackie, R.A. Mackie & Co., Inc., to Lewis Antone, Division of Market Regulation, SEC, dated November 20, 1991, at 1.

[28] E.E. Geduld, President, John E. Herzog, Chairman/CEO, Herzog, Heine, Geduld, to Katherine England, Branch Chief, OTC Regulation, SEC, dated August 14, 1992, at 1.

[29] Letter from T. Grant Callery, Vice President and Deputy General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, SEC, dated December 9, 1992, at 2.

[30] *Id.*

[31] *Id.* at 1.

[32] 15 U.S.C. 78o–3(b)(6) (1988).

[33] See also Securities Exchange Act Release No. 28186 (July 5, 1990), 55 FR 28703, approving File No. SR–NASD–89–5.

[34] In the context of a mark-up case, the Commission has stated that, "In order for a dealer to meet the statutory definition of market maker, it must in fact be willing *both* to buy and sell the security in question in the inter-dealer market." (emphasis in the original). Adams Securities, Inc., Securities Exchange Act Rel. No. 31971 (March 9, 1993), 53 SEC Docket 2379, (firm was held not to be a market maker although it was listed as a market maker in the pink sheets.)

with the largest persistent short positions[35] and the NASD's proposal is designed to address those situations. The Commission expects to monitor closely the effect of the proposal and will review with the NASD whether further modifications are necessary or appropriate given that experience.[36]

## VI. Conclusion

In conclusion, the Commission believes that the close-out rule approved herein, is consistent with the Act. The rule will impose discipline on naked short selling and will assist in preventing manipulation. Such a requirement will thereby strengthen the integrity of the Nasdaq market.

*It is therefore ordered,* Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.[37]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

**Margaret H. McFarland,**

*Deputy Secretary.*

Appendix

**NASD Uniform Practice Code**

*Sec. 71 Mandatory Close-Out for Short Sales*

*A contract involving a short sale in Nasdaq securities described in sub-paragraph (a) below, for the account of a customer or for a member's own account, which has not resulted in delivery by the broker-dealer representing the seller within 10 business days after the normal settlement date, must be closed by the broker-dealer representing the seller by purchasing for cash or guaranteed delivery securities of like kind and quantity.*

*(a) This requirement shall apply to Nasdaq securities, as published by the Association, which have clearing short positions of 10,000 shares or more and that are equal to at least one-half (½) of one percent of the issue's total shares outstanding.*

*(b) This mandatory close-out requirement shall not apply to bona fide market making transactions and transactions that result in bona fide fully hedged or bona fide fully arbitraged positions.*

Artice III, Section 1 of the NASD Rules of Fair Practice

Interpretation of the Board of Governors on Prompt Receipt and Delivery of Securities

* * * * *

*(5) "Bona Fide Fully Hedged" and "Bona Fide Fully Arbitraged"*

*In determining the availability of the exemption provided in Section (2)(b) above and in Section 71 of the Uniform Practice Code from short sale requirements for "bona fide fully hedged" and "bona fide fully arbitraged" transactions, the following guidelines shall apply. These guidelines are for illustrative purposes and are not intended to limit the Association's ability to determine the proper scope of the terms "bona fide fully hedged" or "bona fide fully arbitraged" pursuant to this provision, on a case-by-case basis.*

*(a) Bona Fide Fully Hedged*

*The following transactions shall be considered bona fide fully hedged:*

*1. Short a security and long a convertible debenture, preferred or other security which has a conversion price at or in the money and is convertible within ninety days into the short security.*

*Example: Long ABCD Company 9% convertible subordinated debentures due 1998. Each debenture is convertible into common at $27.90 per share of common equal to 35.842 shares of common per IM debenture.*

*• With the price of the ABCD at 8¾–9 and a short position of 100 shares of ABCD the short position would not be exempt.*

*• If the price of ABCD was $28 with a short position of 100 shares, 35 shares would be exempt and the remaining 65 shares would not be exempt.,*

*2. Short a security and long a call which has a strike price at or in the money and which is exercisable within 90 calendar days into the underlying short security.*

*Example: Long 1 call of EFGH (44⅛) with a strike price of 40 expiring within 90 calendar days.*

*• With the circumstances as above 100 shares would be exempt.*

*• If the strike price was 50 a short position of 100 shares would not be exempt.*

*• With any strike price and the call expiring in more than 90 days any short of the common would not be exempt.*

*3. Short a security and long a position in warrants or rights which are exercisable within 90 days into the short security. To the extent that the long warrants or rights are "out of the money," then the short position shall be exempt up to the market value of the long warrants or rights.*

*Example: Long 100 warrants of IJKL (IJKLW: 2¼–2¾). Each warrant is exercisable into 1 share of common at $2. (IJKL: 4–4½).*

*• With the circumstances as above a short position of 100 shares would be exempt.*

*• If the price of IJKL is $1.50 and the market value of long warrants is ¼, a short position of 16 shares would be exempt.*

*(b) Bona Fide Fully Arbitraged*

*The following transactions shall be considered bona fide fully arbitraged:*

*1. Long a security purchased in one market together with a short position from an offsetting sale of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in price in the 2 markets.*

*Example: Purchase 100 shares of EFGH on the London Stock Exchange and simultaneously effecting a short sale of 100 shares of EFGH on Nasdaq.*

*• Under the above circumstances, the 100 share short position would be exempt.*

*2. Long a security which is without restriction other than the payment of money exchangeable or convertible within 90 calendar days of the purchase into a second security together with a short position from an off-setting sale of the second security at or about the same time for the purpose of taking advantage of a concurrent disparity in the prices of the 2 securities.*

*Example: Long 100 shares of MNOP (MNOP: 51–51¼) which is being acquired by ORST Corp. (ORST: 52⅛–52⅜) at the rate of 1.15 shares per MNOP share.*

*• If the exchange is to take place within 90 days then a short of 115 shares of ORST would be exempt from the mandatory buy-in. Also, if the exchange was to take place at a date later than 90 days, all short positions in the above example would be subject to the mandatory buy-in.*

*(c) The transaction date of the short sale shall govern when a fully hedged or fully arbitraged position exists.*

[FR Doc. 93–17229 Filed 7–20–93; 8:45 am]

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[35] Pollack Study at 6 and 52.

[36] The NASD represents that it will provide the Commission with the results of a study regarding the efficacy of the close-out rule six months from the effective date of the rule change. Letter from T. Grant Callery, Vice-President and General Counsel, NASD to Katherine A. England, Assistant Director, SEC, dated July 14, 1993.

[37] The NASD states that the mandatory close-out rule will become effective within 90 days of Commission approval on a date to be announced in a Notice to Members.

[38] 17 CFR 200.30–3(a)(12) (1992).

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**[Rel. No. IC–19574; File No. 812–8288]**

## The Equitable Life Assurance Society of the United States, et al.

July 14, 1993.

**AGENCY:** Securities and Exchange Commission (the "Commission" or the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** The Equitable Life Assurance Society of the United States ("Equitable") and Separate Account A of The Equitable Life Assurance Society of the United States (the "Separate Account").

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain group variable annuity contracts.

**FILING DATE:** February 25, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 9, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants: The Equitable Life Assurance Society of the United States, 787 Seventh Avenue, New York, NY 10019, Attn: Mary P. Breen, Vice President & Counsel.

**FOR FURTHER INFORMATION CONTACT:** Wendy Finck Friedlander, Senior Attorney, or Michael V. Wible, Special Counsel, (202) 272–2060, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

### Applicant's Representations

1. Equitable is a stock life insurance company that has been in business since 1859. Equitable is the depositor and principal underwriter of the Separate Account.

2. The Separate Account was established on August 1, 1968 under New York Insurance Law and is registered under the Act as a unit investment trust. The Separate Account is used to fund benefits under group variable annuity contracts and certificates, as well as individual variable annuity contracts, issued by Equitable. The Separate Account will be used to fund a new series of group variable annuity contracts designed to fund retirement plans that are qualified under the Internal Revenue Code (the "Momentum Plus Contract"). The Separate Account is divided into investment divisions, each of which invests solely in the shares of one of the corresponding portfolios of The Hudson River Trust.

3. A charge of up to $7.50 is deducted from a participant's account value on the last business day of each calendar quarter. Equitable has reserved the right to increase this charge upon 90 days written notice to employers or plan trustees. Applicants represent that this charge, on an annual basis, is no greater than the cost of administering the Momentum Plus Contract for one year.

4. Equitable will also assess each Investment Division of the Separate Account with a daily asset charge at an effective annual rate of .25% for administrative expenses associated with the Momentum Plus Contract. This charge is a guaranteed maximum and cannot be increased for retirement plans which are covered under the Momentum Plus Contract. Applicants do not expect that the total administrative charge, together with the quarterly administrative charge, will exceed the expected costs of the administrative services rendered.

5. A $25 loan set-up fee will be deducted from a participant's account value at the time a loan is established. In addition, a $6 loan recordkeeping fee is deducted at the end of each calendar quarter during which a participant had a loan outstanding. Equitable has reserved the right to increase these charges although it does not expect to profit from them.

6. In addition to offering the Momentum Plus Contract as the funding vehicle to retirement plans, Equitable intends to offer its services as plan recordkeeper to defined contribution plans qualified under section 401(a) of the Internal Revenue Code. The basic plan recordkeeping service, which is not option, will be provided at an annual charge of $300 per plan. The employer will be billed directly for these services and Equitable will make no deduction from participant account values in order to cover these charges.[1]

7. Equitable proposes to deduct from the Separate Account a daily asset charge for mortality and expense risks at an effective annual rate of 1.10% The charge is .50% for mortality risks and .60% for expense risks.

8. Equitable assumes a mortality risk by its contractual obligation to continue to make annuity payments for the entire life of the annuitant under guaranteed fixed annuity options involving life contingencies. Equitable assumes an additional mortality risk by its contractual guarantees related to annuity purchase rates. Finally, Equitable assumes a mortality risk by its contractual obligation to waive the contingent deferred sales charge upon payment of the death benefit.

[1] Applicants represent that the application will be amended during the Notice Period to make these representations.

9. Equitable assumes an expense risk because the administrative charges may be insufficient to cover actual administrative expenses. Equitable commits itself throughout the life of the Momentum Plus Contract to pay all expenses, without limit as to amounts, relating to the administration of the Momentum Plus Contract and the Separate Account.

10. If the administrative charges and the mortality and expense risk charge are insufficient to cover the expenses and costs assumed, the loss will be borne by Equitable. Conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be profit to Equitable. Equitable expects a profit from the mortality and expense risk charge.

11. No front-end sales charge is collected or deducted at the time contributions are made. A contingent deferred sales charge will be assessed against certain withdrawals. The charge is (i) 6% of the amount withdrawn or, if less, (ii) 8.5% of contributions made on behalf of the participant for whom the withdrawal is made (less any contingent deferred sales charges previously deducted). Under certain circumstances, a withdrawal charge will not be assessed. The amounts obtained from this charge will be used to reimburse Equitable for sale expenses including commissions and other promotional or distribution expenses associated with printing and distribution of prospectuses and sales literature. To the extent that the contingent deferred sales charge is insufficient to cover the actual costs of distribution, the expenses will be paid from Equitable's general assets, which will include profit, if any, derived from the mortality and expense risk charge.

12. Equitable's current practice is to deduct a charge for premium taxes from the amount applied to provide an annuity benefit. Equitable has reserved the right to deduct any such charge from contributions or from amounts withdrawn or surrendered. Equitable does not expect to profit from this charge.

### Applicants' Legal Analysis and Conditions

1. Sections 26(a)(2)(C) and 27(c)(2) prohibit a registered unit investment trust and any depositor or underwriter thereof from selling periodic payment plan certificates unless the proceeds of all payments are deposited with a qualified trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the

Commission may prescribe, for performing bookkeeping and other administrative services. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the mortality and expense risk charge from the assets of the Separate Account under the Momentum Plus Contract.

2. Applicants state that they have reviewed publicly available information regarding products of other companies taking into consideration such factors as: death benefits; the existence of guaranteed annuity purchase rates; market sector; current charge levels; the existence of charge level guarantees; and the manner in which charges are imposed. Based upon this review, Applicants have concluded that the mortality and expense risk charge is within the range of charges determined by industry practice for comparable products. Applicants will maintain at their principal office, and make available on request to the Commission or its staff, a memorandum setting forth in detail the variable annuity products analyzed and the methodology, and results of, Equitable's comparative review.

3. The contingent deferred sales charge may be insufficient to cover all distribution costs. In that event, if a profit is realized over time from the mortality and expense risk charge, all or a portion of the mortality and expense risk charge might be viewed as providing for a portion of these distribution costs. Notwithstanding the foregoing, Equitable has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and investors. The basis for such conclusion is set forth in a memorandum which will be maintained by Equitable at its principal office and will be available on request to the Commission or its staff.

4. Equitable also represents that the Separate Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the Act.

### Conclusion

Applicants submit that, for all of the reasons stated herein, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act meet the standards set out in Section 6(c). Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93–17232 Filed 7–20–93; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. IC–19575; File No. 812–8444]**

## International Life Investors Insurance Co.; Application for Exemption

July 14, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

**APPLICANTS:** International Life Investors Insurance Company ("Life Investors"), ILI Endeavor Variable Annuity Account ("Variable Account"), and AEGON USA Securities, Inc. ("AEGON Securities"), referred to collectively as the "Applicants."

**RELEVANT 1940 ACT SECTIONS:** Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as the funding medium for certain flexible premium variable annuity contracts (the "Policies").

**FILING DATE:** The application was filed on June 14, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 9, 1993, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Craig D. Vermie, Esq., International Life Investors Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. Life Investors is a stock life insurance company incorporated under the laws of the State of New York on January 22, 1987. Life Investors is an indirect wholly-owned subsidiary of AEGON USA, Inc. which, in turn, is indirectly owned by AEGON n.v.

2. Life Investors established the Variable Account as a separate account under the laws of the State of New York on June 10, 1993. Concurrent with the filing of this application, the Variable Account filed a Form N–4 registration statement with the Commission to register under the 1940 Act as a unit investment trust, and to register the Policies under the Securities Act of 1933.

3. The Variable Account consists of several subaccounts, each of which invests solely in the shares of one or more of the investment portfolios of the Endeavor Series Trust (the "Series Fund"), or in the shares of the WRL Growth Portfolio of the WRL Series Fund, Inc. Both the Series Fund and WRL Series Fund, Inc. are open-end management investment companies.

4. An affiliate of Life Investors, AEGON Securities will serve as the distributor and principal-underwriter of the Policies. AEGON Securities is registered as a broker-dealer under the Securities Exchange Act of 1934, and is a member of the National Association of Securities Dealers.

5. The Policies may be purchased on a non-tax qualified basis (the "Non-Qualified Policies") or they may be purchased and used in connection with retirement plans or individual retirement accounts that qualify for favorable federal income tax treatment ("Qualified Policies"). Non-Qualified Policies may be purchased with an initial premium payment of $5,000, and Qualified Policies may be purchased with an initial premium payment of $1,000. Initial payments of $50 will be permitted for a Policy purchased and used in connection with a tax-deferred 403(b) annuity. Additional premium

payments under both Qualified and Non-Qualified Policies must be at least $500 (or $50 for a Policy used in connection with a tax-deferred 403(b) annuity) and must be in advance of the date on which annuity payments commence (the "Annuity Commencement Date").

6. The Policy owner may allocate premium payments to one or more subaccounts of the Variable Account. The minimum amount allocable to any subaccount is $500.

7. Prior to the Annuity Commencement Date, a Policy owner may surrender all or a portion of the Policy Value.[1] In addition to any applicable contingent deferred sales charge (described below) and premium taxes, surrenders may be subject to income taxes and tax penalties. A Policy owner also may transfer Policy Value between subaccounts of the Variable Account prior to the Annuity Commencement Date. The minimum amount that can be withdrawn or transferred from a subaccount is the lesser of $500 or the entire subaccount value.

8. Life Investors currently does not impose charges for any transfers, but reserves the right to impose a $25 charge for the thirteenth and each subsequent transfer request made by the Policy owner during a single Policy year. Life Investors does not anticipate any profit from the assessment of transfer charges.

9. The Policy owner may select from several annuity payment options on both a fixed and variable basis. If the annuitant who also is the Policy owner dies prior to the Annuity Commencement Date, a death benefit is payable upon receipt of due proof of death as well as proof that the annuitant died prior to the Annuity Commencement Date. The death benefit is equal to the greater of (a) the Policy Value or (b) premium payments (net of withdrawals) plus 5.0% annual interest. If the annuitant is not the Policy owner, the Policy owner generally will become the annuitant on the annuitant's death.

10. Life Investors will deduct an annual policy maintenance charge of the lesser of 2% of Policy Value or $35 per Policy year from each subaccount in which the Policy owner has invested at the end of each Policy year prior to the Annuity Commencement Date (and upon full surrender on any date other than a Policy anniversary). This annual charge will compensate Life Investors for the administrative services it provides to Policy owners, and will not be increased in the future.

11. In addition, prior to the Annuity Commencement Date, Life Investors will deduct from the assets of each subaccount of the Variable Account a daily administrative expense charge at an effective annual rate of 0.15% of the net assets of the subaccount. If a variable annuity payment option is chosen, however, the daily administrative expense charge will continue to apply after the Annuity Commencement Date. The administrative expense charge may increase, but Life Investors guarantees that the charge will never exceed an effective annual rate of 0.30% of the net assets of the subaccount.

12. Life Investors does not anticipate any profit from, and will monitor to ensure compliance with Rule 26a–1 of the 1940 Act by, its charges for administrative expenses and the proceeds derived therefrom.

13. No front-end sales charges will be imposed when purchase payments are applied under the Policies. However, during the first seven Policy years, a contingent deferred sales charge (the "CDSC") will be assessed against certain full or partial Policy surrenders to cover the expenses relating to the sales of the Policies. After the first Policy year, however, no CDSC will be applied to that portion of the first surrender in the Policy year equal to 10% or less of the Policy Value. Moreover, under certain circumstances, the CDSC also will not apply if the Policy Value is applied to provide an annuity under one of the annuity payment options.

14. For purposes of computing the CDSC, the earliest premium payments will be deemed to be withdrawn first. The amount of CDSC, expressed as a percentage of each premium payment withdrawn, is as follows:

| Policy years since premium was paid | Applicable CDSC (percent) |
|---|---|
| Fewer than 1 | 7 |
| At least 1 and fewer than 2 | 6 |
| At least 2 and fewer than 3 | 5 |
| At least 3 and fewer than 4 | 4 |
| At least 4 and fewer than 5 | 3 |
| At least 5 and fewer than 6 | 2 |
| At least 6 and fewer than 7 | 1 |

15. Life Investors does not anticipate that the CDSC will generate sufficient revenues to cover the cost of distributing the Policies. The deficiency will be met from general assets of Life Investors, which may include amounts derived from the charge for mortality and expense risks (described below).

16. Life Investors will deduct from the Policy Value on the Annuity Commencement Date (or upon full surrender or payment of the death benefit) the aggregate premium taxes paid on behalf of a particular Policy. Although no charges currently are made for federal, state, or local taxes other than premium taxes, Life Investors reserves the right to deduct such taxes from the Variable Account in the future.

17. Life Investors will assess a daily charge for bearing certain mortality and expense risks in connection with the Policies. The charge will be equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that 1.25%, approximately 0.45% is attributable to mortality risks, and approximately .80% is attributable to expense risks. Life Investors guarantees that the combined total of the mortality and expense risk charge and the 0.15% administrative expense charge will never exceed 1.40%. The mortality and expense risk charge will apply prior to the Annuity Commencement Date, and will continue to apply after the Annuity Commencement Date if the annuitant selects a variable annuity payment option.

18. The mortality risk borne by Life Investors arises primarily from its contractual obligation: (a) To make annuity payments for the life of the annuitant(s) under annuity payment options involving life contingencies; and (b) to pay death benefits prior to the Annuity Commencement Date.

19. The expense risk assumed by Life Investors is the risk that Life Investors' actual administrative costs will exceed the amount recovered through the administrative and policy maintenance charges.

20. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on Life Investors. Conversely, if the amount deducted proves more than sufficient, the excess will be profit to Life Investors. Life Investors currently anticipates earning a profit from the mortality and expense risk charge.

**Applicant's Legal Analysis and Conclusions**

1. The Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account which serves as a funding medium for the Policies.

[1] The "Policy Value" is the sum of the value of all accumulation units credited to a Policy for a particular valuation period (i.e., the period of time from one determination of accumulation unit and annuity unit values to the next determination of such values) in the Variable Account, plus the value in the fixed account of Life Investors.

2. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefore from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. Applicants submit that Life Investors is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the assessment to the Policies of a 1.25% mortality and expense risk charge is consistent with the protection of investors because it is a reasonable and proper insurance charge. The mortality and expense risk charge is a reasonable charge to compensate Life Investors for the risks that: (a) Annuitants under the Policies will live longer as a group than has been anticipated; (b) the Policy Value will be less than the death benefit; and (c) the administrative expenses will exceed the amounts derived from the administrative charges.

4. Life Investors represents that the level of the mortality and expense risk charge is within the range of industry practice for comparable variable annuity contracts. This representation is based upon Life Investors' analysis of publicly available information about similar industry products, taking into account such factors as: current charge levels, the existence of charge level guarantees; guaranteed death benefits; and guaranteed annuity rates. Life Investors represents that it will maintain at its administrative offices, and make available to the Commission, a memorandum setting forth in detail the variable annuity products analyzed in, and the methodology and results of, its comparative survey.

5. Applicants acknowledge that the CDSC may be insufficient to cover all costs relating to the distribution of the Policies. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the CDSC. In such circumstances, a portion of the mortality and expense risk charge might be viewed as providing for a portion of the costs relating to distribution of Policies. Life Investors concludes that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Variable Account and the Policy owners. The basis for this conclusion is set forth in a memorandum which Life Investors will maintain and make available to the Commission at its administrative offices.

6. Life Investors represents that the Variable Account will invest only in management investment companies which undertake, in the event such companies adopt plans under Rule 12b-1 of the 1940 Act to finance distribution expenses, to have boards of directors (or trustees)—a majority of whom are not interested persons of the respective company—formulate and approve any such plans under Rule 12b-1.

## Conclusion

Applicants assert that, for the reasons set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Policies meet the standards in section 6(c) of the 1940 Act. Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17231 Filed 7-20-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. IC-19571; 813-118]**

## PB-SB 1983 Investment Partnership I, et al.; Application

July 14, 1993.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** PB-SB 1983 Investment Partnership I, PB-SB 1983 Investment Partnership IA, PB-SB 1984 Investment Partnership I, PB-SB 1985 Investment Partnership I and PB-SB 1986 Investment Partnership VI, (the "Real Estate Partnerships"), PB-SB 1983 Investment Partnership III, PB-SB 1985 Investment Partnership VII, (the "Venture Capital Partnerships"), and PB-SB Investments Inc. and PB-SB Ventures Inc (the "General Partners").

**RELEVANT ACT SECTIONS:** Applicants seek an order under sections 6(b) and 6(e).

**SUMMARY OF APPLICATION:** Applicants seek an amendment to several previous orders granted to certain employees' securities companies. The amendment would eliminate the requirement that such companies file annual and semi-annual reports with the SEC.

**FILING DATES:** The application was filed on November 17, 1992, and amended on March 30, 1993. By supplemental letter dated July 14, 1993, counsel, on behalf of applicants, agreed to file another amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally, or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC 450 Fifth Street, NW., Washington, DC 20549. Applicants, Seven World Trade Center, New York, New York 10048.

**FOR FURTHER INFORMATION CONTACT:** Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

## Applicants' Representations and Analysis

1. The Real Estate Partnerships and Venture Capital Partnerships are employees' securities companies, limited partnerships formed under the laws of the State of New York and registered under the Act as closed-end management investment companies. PB-SB Investments Inc and PB-SB Ventures Inc are the general partners of the Real Estate Partnerships and Venture Capital Partnerships, respectively.

2. Applicants request that the proposed relief extend to partnerships that may be formed in the future by Salomon Inc, a Delaware corporation (previously known as Phibro-Salomon Inc), its affiliates and their successors in interest to pool their investment resources and make real estate, real estate-related, venture capital, equity, or municipal bond investments. Currently there are no partnerships in existence that invest in equity ("Equity Partnerships") or municipal bonds ("Municipal Bond Partnerships"). (Future Equity Partnerships and Municipal Bond Partnerships and Venture Capital Partnerships are collectively referred to as the "Partnerships.")

3. The Partnerships enable participating employees to pool their investment resources and make real estate, real estate-related, venture capital investments, equity, and municipal bond investments. Interests in the Partnerships are offered to eligible persons who qualify as "accredited investors" within the meaning of Regulation D under the Securities Act of 1933, who have received incomes of at least $150,000 in the calendar year preceding acquisition of partnership interests, and who generally have substantial knowledge of and experience in financial matters, including investments of the type represented by interests in the partnerships.

4. The Partnerships are subject to certain prior exemptive orders (the "Orders")[1] that require each Partnership to file annual and semi-annual reports with the SEC. Applicants seek an amendment to the Orders to eliminate the requirement that each of the Partnerships file with the SEC (a) annual reports provided to the limited partners under the terms of the respective partnership agreements and (b) annual and semi-annual reports on Form N-SAR.

5. Applicants believe that no purpose under the Act is served by continuing to require the filing of annual reports with the SEC by the Partnerships. The Partnerships' initial undertakings to file such annual reports with the SEC were made prior to the adoption by the SEC of rule 30a-1, which exempts filers of reports on Form N-SAR from filing annual reports under the Act. In addition, applicants note that, pursuant to the terms of the partnership agreements, the annual reports will continue to be provided to the limited partners, and they will also be available to the limited partners upon requests.

6. Applicants also believe that the usual reasons for requiring filings on Form N-SAR with the SEC do not exist where, as here, investments in the Partnerships are not available to the public; the limited partners are sophisticated investors; the Partnerships provide the limited partners with alternative reports under the terms of the partnership agreements, which reports are tailored to the distinct nature of the Partnerships and the particular needs of the limited partners for tax-related reporting; and there is no trading of partnership units.

7. In requesting relief from the Partnerships' prior undertakings in the Orders for providing copies to their respective limited partners of reports filed with the SEC on Form N-SAR, applicants note that the Partnerships have not made any other representations to their respective limited partners regarding the availability of these reports. Applicants further note that while these reports have been made available to limited partners upon request, no limited partner has ever requested any such report on Form N-SAR. In light of this fact, and in view of the alternative reports that are provided to the limited partners by the Partnership as discussed above, applicants submit that it would be appropriate for the Partnerships to discontinue the availability of the reports on Form N-SAR.

8. Each Partnership will permanently maintain and preserve such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the limited partners. The General Partners will permanently maintain and preserve all accounts, books, and other documents as are necessary or appropriate to record its transactions with the Partnerships. All such accounts, books, and other records maintained by the Partnerships and/or the General Partners will be subject to examination by the SEC or its staff.

[1] For the most recent amendment to all relevant Orders, see Investment Company Act Release Nos. 15286 (Sept. 5, 1986) (notice) and 15354 (Oct. 9, 1986) (order). The previous Orders include: Investment Company Act Release Nos. 12633 (Sept. 3, 1982) (notice) and 12726 (Oct. 12, 1982) (order) (Real Estate Partnerships); Investment Company Act Release Nos. 13479 (Sept. 1, 1983) (notice) and 13539 (Sept. 27, 1983) (order) (Venture Capital Partnerships); Investment Company Act Release Nos. 13653 (Dec. 2, 1983) (notice) and 13693 (Dec. 29, 1983) (order) and Investment Company Act Release Nos. 13802 (Mar. 1, 1984) (notice) and 13860 (Apr. 2, 1984) (order) (Equity Partnerships); and Investment Company Act Release Nos. 14049 (July 24, 1984) (notice) and 14110 (Aug. 24, 1984) (order) (Municipal Bond Partnerships).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 93-17233 Filed 7-20-93; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-19570; 813-95]**

## Werconn Limited Partnership et al.; Application for Exemption

July 14, 1993.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

**APPLICANTS:** Werconn Limited Partnership (the "Initial Partnership"). Patrick J. Borruso, on behalf of all the managing general partners of the Initial Partnership, joins the Initial Partnership in its request on behalf of other similar partnerships that may be offered to the same class of limited partner investors (the "Subsequent Partnerships").

**RELEVANT ACT SECTIONS:** Applicants seek an order under sections 6(b) and 6(e) of the Act granting an exemption from all the provisions of the Act, and the rules and regulations thereunder, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and the rules and regulations thereunder.

**SUMMARY OF APPLICATION:** The Initial Partnership and Patrick J. Borruso seek an order that would grant the Initial Partnership and the Subsequent Partnerships (the "Partnerships") an exemption from most provisions of the Act and would permit certain affiliated and joint transactions. Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

**FILING DATE:** The application was filed on March 11, 1991 and amended on July 20, 1992, December 7, 1992, and July 13, 1993.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 9, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Patrick J. Borruso, Wertheim Schroder & Co. Inc., 787 7th Avenue, New York, New York 10019.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Mann, Special Counsel, at (202) 504–2259, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

**Applicants' Representations**

1. The Initial Partnership is a Connecticut limited partnership formed in 1985 that has made numerous investments since its formation. The Managing Partners of the Initial Partnership are individuals who also are officers and directors of Wertheim Schroder & Co. Incorporated ("Wertheim Schroder") a wholly-owned subsidiary of Wertheim Schroder Holdings, Inc., a Delaware corporation ("Holdings").[1] Wertheim Schroder, a Delaware corporation, is a broker-dealer registered under the Securities Exchange Act of 1934. Wertheim Schroder also is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). Holdings and its subsidiaries (collectively, the "Wertheim Schroder Group") are involved in investment banking, sales and trading, securities research, and money management.

2. The Initial Partnership is the first of several anticipated investment partnerships that the Managing Partners plan to establish to enable certain key employees of the Wertheim Schroder Group to pool their investment resources and to receive the benefit of certain investment opportunities which come to the attention of the Wertheim Schroder Group, without each investor having to identify such opportunities and analyze their investment merit. In addition, the pooling of resources should allow the investors to achieve diversification of investments and participation in investments that usually would not be offered to them as individual investors. The ultimate purpose of the Partnerships is to reward and retain key personnel and to attract other such individuals to the Wertheim Schroder Group. The partnership agreement of the Initial Partnership (the "Partnership Agreement") provides, however, that all parties understand that the interests of the clients of members of the Wertheim Schroder Group and the legal and ethical obligations of members of the Wertheim Schroder Group are paramount and prior to the interests of the Partnership or any Partner.

3. Partnership interests in the Partnerships ("Interests") will be offered without registration under a claim of exemption under section 4(2) of the Securities Act of 1933 (the "1933 Act"). Interests will be offered and sold only to eligible employees of the Wertheim Schroder Group ("Eligible Employees"), Holdings, Wertheim Schroder, and certain corporate members of the Wertheim Schroder Group. To be an Eligible Employee, an employee must be a current employee, officer, or director of a member of the Wertheim Schroder Group and, except as noted below, an "accredited investor" under rule 501(a)(6) of Regulation D under the 1933 Act. A small number (under 20) of existing Limited Partners (as defined below) in the Initial Partnership who are not accredited investors have been admitted upon their representations that they are sophisticated investors, that they had reportable income from all sources (including any profit shares and bonus) in the calendar year immediately preceding their investment in the Initial Partnership in excess of $150,000, and that they had a reasonable expectation of reportable income in the year of their investment of at least $150,000. Each Partnership meets the definition of "employees' securities company" in section 2(a)(13) of the Act.

4. Holdings will participate as a Limited Partner in the Initial Partnership on the same terms as the other Limited Partners, but may convey portions of its Interests to Eligible Employees (and certain cooperate members of the Wertheim Schroder Group).

5. The Partnerships will be similar structurally and operationally in all material respects except as specifically discussed in the application. The management and control of each Partnership, including all investment decisions, will be exclusively vested in the Managing Partners. The Managing Partners will impose minimum income requirements and minimum Capital Contributions (as defined in the Partnership Agreement) for participants, and will impose restrictions with respect to such characteristics as admission and transferability. Individual general and limited partners of the Partnerships (the "General Partners" and "Limited Partners," respectively, and collectively the "Partners") will share in the net profits or net losses of the partnerships for each fiscal year generally based on the proportion that the proportion that the amounts of their Capital Contributions allocated by the Managing Partners to Partnership investments bear to the aggregate amount of the Capital Contributions of all Partners allocated by the Managing Partners to such investments. The Partnerships may desire to invest in transactions or companies (each, a "Related Entity") with respect to which a member of the Wertheim Schroder Group provides management, investment management, or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including, without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains, or similar compensation.

6. The Managing Partners will determine, in their sole discretion, whether and the terms and conditions upon which individual Partners will be permitted to make Capital Contributions to the Partnerships, including the amount and timing of such contributions, the collateralization of any obligation to contribute capital in the future, the setting of minimum financial or sophistication requirements to be met as a condition of being permitted to contribute capital, and the terms and conditions of subscription agreements, if any.

7. The Managing Partners will determine, in their sole discretion, the particular investments to be made by the Partnership and the particular investments to which a Partner's Capital Contributions will be attributed and in which such Partner will have an interest. Such determinations will depend on many different factors such as the particular investment opportunity, the introduction of the investment opportunity to the Partnerships, and the length of service of the Partner in the Wertheim Schroder Group. Once allocations are made, in all cases similarly situated Limited Partners will be treated similarly under the Partnership Agreement.

[1] The General Partners of Subsequent Partnerships may include individual executives of the Wertheim Schroder Group or its members. The managing general partners of the Initial Partnership and the Subsequent Partnerships are collectively referred to as the "Managing Partners."

8. The minimum initial investment of each Limited Partner of a Partnership shall be $10,000. The minimum initial investment of each General Partner of a Partnership shall be $50,000. The Managing Partners are authorized to cause the Partnerships to raise additional capital.

9. Interests in the Initial Partnership are non-transferable except with the prior written consent of the Managing Partners, which consent may be withheld in their absolute discretion. In addition, no person may become a transferee or substitute Partner of any of the Partnerships unless the person is a member of one of the classes of persons listed in section 2(a)(13) of the Act, except that a legal representative or executor may hold an interest in a Partnership in order to settle an estate of a decedent or bankrupt or for similar purposes. Interests are not redeemable even upon the Eligible Employee's termination of employment from the Wertheim Schroder Group.

10. Each managing Partner of the Initial Partnership is a "person associated with an investment adviser" within the meaning of section 202(a)(17) of the Advisers Act by virtue of his status as an officer and director of Wertheim Schroder, and is listed on Wertheim Schroder's Form ADV. To the extent that a Managing Partner of any Subsequent Partnership is neither listed on Wertheim Schroder's Form ADV nor registered as an investment adviser under the Advisers Act, applicants will consider, at the time of formation of the Subsequent Partnership, whether that Managing Partner will be required to register as an investment adviser under the Advisers Act.

11. No compensation will be paid to the Managing Partners by the Partnership for their services. Reasonable and necessary out-of-pocket expenses, however, may be paid to the Managing Partners in reimbursement of actual third party expenses incurred on behalf of the Partnerships. Such out-of-pocket expenses may include mailing costs, travel expenses, telephone charges applicable to the Partnerships' business and similar costs. Otherwise, except as stated in the next sentence and the next paragraph, the Wertheim Schroder Group will bear all expenses in connection with the organization and internal operations of the Partnerships in connection with the Nominal Accounts,[2] including all third party legal and accounting fees, and all overhead and administrative expenses. As contemplated by and pursuant to section 17(e) of the Act, a Partnership may pay commissions to members of the Wertheim Schroder Group for Transactions in Partnership portfolio securities.

12. With respect to Related Entity transactions into which a Partnership, may enter, a member of the Wertheim Schroder Group may charge and receive, and the Partnership, directly or through an entity in which it has invested, may pay to such member fees (including without limitation, performance fees, advisory fees, management fees, and fees for brokerage and clearing services), its share of direct and indirect out-of-pocket and organizational expenses in connection with such investment, and compensation in the form of carried interests entitling such member to share disproportionately in income and capital gains or similar compensation. In such a case, however, the Wertheim Schroder Group reserves the right to not charge or to waive all or part of any such fees, out-of-pocket and organizational expenses and compensation that such Partnerships otherwise might incur or bear directly or indirectly.

13. The General Partners will share in the net profits or net losses of the Partnerships for each fiscal year generally based on the proportion that the amounts of their Capital Contributions allocated to Partnership investments bear to the aggregated amount of the Capital Contributions of all Partners allocated to such investments.[3]

14. Any natural person who is not now, but later seeks to become, a General Partner in the Initial Partnership will be required to be an "accredited investor" under rule 501(a)(6) of Regulation D under the 1933 Act. Any natural person who seeks to become a General Partner in a Subsequent Partnership will also be required to be an "accredited investor" under rule 501(a)(6).

15. The General Partners of the Initial Partnership who are not also Managing Partners of the Initial Partnership ("Passive General Partners") will not be actively involved in managing the Initial Partnership. It is not currently intended that new Passive General Partners will be admitted to the Initial Partnership. New Passive General Partners will be admitted to the Initial Partnership, however, and Passive General Partners will be admitted to Subsequent Partnerships, only if they are entitled to receive indemnification from Wertheim Schroder for acting as General Partners.

16. The Partnerships will seek capital appreciation through direct or indirect investment in risk capital opportunities which are expected to include (a) interests, including warrants, options, and partnership interests (e.g., private placements), in new ventures, (b) emerging private companies thought to have high growth potential, (c) leveraged buyouts (including divisional and partial leveraged buyouts), (d) leveraged buyout or equity public or private investment partnerships or funds sponsored or managed by unaffiliated third parties or by the General Partners or members of the Wertheim Schroder Group, in which the General Partners or other members of the Wertheim Schroder Group have an interest as general or limited partners, and which may invest in any of the types of securities and in any of the same situations that the Partnerships may invest in, (e) strategic blocks of equity and equity-related securities where there is perceived financial or operational undervaluation, (f) equity in private and public company recapitalizations (including "white squire" preferred and similar securities), restructurings, acquisitions, bridge financings, and other forms of equity and mezzanine financing, and (g) private investment partnerships that invest directly or indirectly in real estate and oil and gas ventures. The Partnerships generally will not seek high current income or maintenance of liquidity.

17. No Partnership will invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds), and no Partnership will acquire any security issued by a registered investment company if immediately after such acquisition the Partnership owns more than 3% of the outstanding voting stock of the registered investment company.

18. The Applicants expect that the Partnerships will be offered investment opportunities which require a larger investment than any individual investor or Eligible Employee would be likely to

[2] The term "Account" means any account of the Initial Partnership to which a Partner's Capital Contributions and share of profits and losses with respect to certain investments are credited. A "Nominal Account" is any Account established after the date of the Initial Partnership's Second Restated Articles of Partnership.

[3] The word "generally" is used to reflect the fact that each Partner's share of a Partnership's net profit and net loss arising from a Nominal Account is based on the proportion that his or her capital contributions to that Account bear to the Capital Contributions of all Partners attributed to that Account. In each case, however, the sharing of profit and loss is subject to special allocations in accordance with the Partnership Agreement, which are necessary to comply with and are in accordance with Federal income tax laws and Treasury regulations.

make and that, because of their affiliation with the Wertheim Schroder Group, the Partnerships will be offered participation in investment opportunities which would not be offered to most of the individual General and Limited Partners. In general, the Partnerships intend to invest in investment opportunities offered to, or which come to the attention of, the Wertheim Schroder Group, including opportunities in which the Wertheim Schroder Group (including its Related Entities) or its offerors, directors, and employees invest for their own account. In some instances, the Partnerships and individual employees, officers, and directors of a member of the Wertheim Schroder Group may acquire investments or interests directly or indirectly from the Wertheim Schroder Group acting as principal, including an investment in a Related Entity in which the Partnerships are or will be direct or indirect participants (and in which the Wertheim Schroder Group may or may not remain invested). In addition, the Wertheim Schroder Group may assign to the Partnership directly or indirectly and the Partnership may directly or indirectly assume, parts of the Wertheim Schroder Group's rights and obligations to make additional investments. In instances where a co-investment is made directly or indirectly by the Partnership in securities in which a member of the Wertheim Schroder Group (or a partnership that is a Related Entity in which the Partnership directly or indirectly is a participant) also invests at the same time, the Partnership must pay a price for the securities that is no more than the fair value (which may include carrying costs and certain organizational expenses) and otherwise purchase the securities on the same terms as are available to similarly situated investors[4] in the Wertheim Schroder Group (or such Related Entity).

19. The Wertheim Schroder Group may lend funds directly or indirectly to a Partnership if the Managing Partners commit to an investment on the Partnership's behalf prior to the Partners' funding of their Capital Contributions. In such instances the Wertheim Schroder Group may receive reimbursement for out-of-pocket expenses as well as interest on such funds at its then prevailing broker call rate (i.e., the interest rate at which brokers borrow from banks to cover the securities positions of their clients). Pending investment of Capital Contributions from the Partners and any distribution of proceeds to the Partners, a Partnership's funds may be invested in all types of securities, including without limitation, short-term money market instruments, U.S. Government securities, certificates of deposit and repurchase agreements purchased from or entered into with the Wertheim Schroder Group or third parties, or such funds may be invested in money market funds which may be advised by the Wertheim Schroder Group.

20. The Partnerships may invest, directly or indirectly, all of their assets in one or more transactions involving Related Entities. Such transactions may include but will not be limited to (a) co-investments with the Wertheim Schroder Group in debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; (b) purchases or sales from or to the Wertheim Schroder Group of debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; and (c) purchases of limited partnership interests in equity partnerships (public or private) in which the Partnerships (directly or indirectly) or the Wertheim Schroder Group have an interest (e.g., as a limited partner), whether or not the equity partnerships were managed or sponsored by the Wertheim Schroder Group (as the general partner or adviser), or structured, underwritten, or arranged by the Wertheim Schroder Group. With regard to the above mentioned transactions, the Managing Partners must determine prior to making such investment that the terms of the transaction are fair to the Partners and the Partnerships.

21. A Partnership may be dissolved at any time by General Partners representing 60% or more of the then aggregate Capital (as defined in the Partnership Agreement) of the Partnership. In addition, a Partnership may be dissolved at any time (a) by the vote or consent of the General Partners and Limited Partners, the credit balances of whose Capital Accounts then represent at least two-thirds in interest of the aggregate credit balances of the Capital Accounts of all Partners, (b) upon termination of the Partnership as provided in the Partnership Agreement, and (c) in the event the Managing Partners are empowered to liquidate the affairs, business, assets, and liabilities of the Partnership. Also, pursuant to the Partnership Agreement, a General Partner may be removed by the vote or consent of two-thirds in interest of the Partnership; upon removal, a General Partner's interest will be converted into that of a Limited Partner. The retirement, withdrawal, transfer of interest, insanity, bankruptcy, or death of the last remaining General Partner shall terminate the Partnership; provided, however, that the retirement, withdrawal, transfer of interest, insanity, bankruptcy, or death of any other General or Limited Partner shall not dissolve the Partnership but the Partnership shall thereafter be continued by the remaining General Partners.

22. For purposes of valuing assets of a Partnership, the securities for which market quotations are readily available shall be valued at market value as of the end of the fiscal year; all other securities and Partnership assets other than securities shall be valued at their fair value as determined in good faith by the Managing Partners or any adviser or consultant, taking into account all factors which the Managing Partners or any adviser or consultant retained by the Managing Partners for such purpose may deem relevant, including costs of liquidation, brokerage, restrictive agreements, and other factors. Distributions to the Partners will be made at such times and in such amounts as determined by the Managing Partners in their sole discretion and, to the extent made, will consist, in the sole discretion of the Managing Partners, of cash, property, or both. When distributing cash or property to Partners, the Managing Partners will use their best efforts to distribute such cash or property, as the case may be, *pro rata* to all Partners entitled to such distribution.

23. The Managing Partners are authorized, in their sole discretion, to sell or dispose of the assets of the Partnership, or make a distribution in kind of the assets held by the Partnership, provided, however, that in the event of a sale or disposition of any such asset (other than a short-term investment pending identification of a suitable investment opportunity or a bridge loan in connection with an equity investment), the proceeds received shall not be reinvested but shall be distributed as soon as is

[4] The term "similarly situated investors" means, for example, that if a Partnership invests in a limited partnership, it does so on the same basis as other limited partners. Similarly, if a Partnership invests in a class of equity securities, it does so on the same basis as other investors in that class of equity securities, but not necessarily on the same basis as investors in different classes of equity or on the same basis as debt investors.

practicable to the Partners entitled thereto.

24. If any Partner (the "Defaulting Partner") who has agreed to make a Capital Contribution shall fail to make all or any portion of such contribution when due or when called by the Managing Partners, the Managing partners may: (a) Exercise all voting, partnership, and other rights of the Defaulting Partner; (b) transfer all or any part of any collateral securing the Defaulting Partner's obligation to make Capital Contributions into the Partnership's name or in the name of its nominee or nominees; (c) declare the entire amount of Capital Contributions immediately due and payable; (d) sell or otherwise dispose of any or all of the collateral; (e) cause the partnership to bring an action against the Defaulting Partner seeking damages and any other remedies available at law; (f) arrange for another person to make the Capital Contribution in lieu of the Defaulting Partner, in which case that other person shall be deemed to be the assignee of that portion of the Defaulting Partner's Partnership Interest; (g) enforce any rights or remedies that the partnership may have as a secured party under the Uniform Commercial Code or any other applicable law, and (h) exercise any rights of setoff against any property of the Defaulting Partner or any other fight that the Partnership is granted under any subscription agreement of the Defaulting Partner. These rights and remedies are cumulative, and the managing Partners may pursue any other remedies available to them or the Partnership to enforce the obligation of the Defaulting Partner. The Defaulting Partner is liable for all costs of the Partnership, including attorney's fees incurred with respect to the collection of any of the Capital Contributions and the enforcement of any of the rights of the Partnership.

25. During the existence of the Partnerships, full and faithful books of account shall be kept, in which the Managing Partners shall enter, or cause to be entered, all business transacted by the Partnerships and all moneys and other things received, advanced, and paid out or delivered on behalf of the Partnerships, the results of the Partnerships' operations, and each Partner's capital, and such books shall at all times be accessible to all Partners.

**Applicants' Legal Analysis**

1. On behalf of the Partnerships, applicants request exemptions from all the provisions of the Act, and the rules and regulations thereunder, except section 9, certain provisions of sections 17 and 30, and sections 36 through 53, and the rules and regulations thereunder.

2. An exemption is requested from section 17(a) of the Act to the extent necessary to: (a) Permit the Wertheim Schroeder Group, acting as principal, to engage in any transaction directly or indirectly with a Partnership; and (b) permit a Partnership to invest in or engage in other transactions with an entity in which the Wertheim Schroder Group or a Partnership has invested or will invest, or with an entity with which the Wertheim Schroder Group or a Partnership is or will become otherwise affiliated. This exemption is requested to permit the Partnerships to directly or indirectly, without limitation, (a) purchase, invest in, sell, or resell as appropriate, securities of companies or investment vehicles (including Related Entities in which the Partnerships and other members of the Wertheim Schroder Group have an interest) and other investment properties offered from, by, or to the Wertheim Schroder Group, on a principal basis, including interests previously acquired for the account of the Wertheim Schroder Group, of the types which are consistent with the investment objectives of the Partnerships (such transactions may include, without limitation, transactions in which a Partnership participates as a selling security holder in a public offering that is underwritten on a principal basis by the Wertheim Schroder Group, including as a member of the underwriting or selling group); (b) purchase interests or property in, or lend money to (subject to the restrictions described below), a company or other investment vehicle (generally, a partnership, trust, or joint venture) in which the Wertheim Schroder Group, or its individual directors, officers, or employees will own or already own 5% or more of the voting (or non-voting) securities (or general or limited partnership interests) of the company or vehicle, or where such company or vehicle is otherwise affiliated with the Wertheim Schroder Group or a Partnership (including through the Partnership's ownership of 5% or more of the voting securities of such entity); (c) sell, put, or tender, or grant options in securities or interests in a company or investment vehicle back to such entity, where that entity is affiliated with the Wertheim Schroder Group, or its individual directors, officers, or employees otherwise than as a result of the Partnership's ownership of voting securities; and (d) purchase securities of the type consistent with the investment objectives of the Partnerships, underwritten on a principal basis by the Wertheim Schroder Group (including as a member of a selling group) on terms at least as favorable as those offered to investors other than affiliated persons of the Wertheim Schroder Group.

3. These transactions will only be effected upon a determination by the Managing Partners that the terms of the transaction are reasonable and fair to the Partners of the Partnerships involved in the transaction and do not involve overreaching of the Partnerships or its Partners on the part of any person concerned.

4. The foregoing exemption is requested on the undertaking that no Partnership will make loans to any member of the Wertheim Schroder Group, or any officer, director, or employee of the Wertheim Schroder Group, with the exception of short term repurchase agreements or other fully secured loans to the Wertheim Schroder Group. In addition, the Partnership will not sell or lease any property to any member of the Wertheim Schroder Group except on terms at least as favorable as those obtainable from unaffiliated third parties, except that this will not prohibit any transaction involving the sale of a general partner interest or a limited partner interest or permitted by the terms of any partnership agreement or investment contract into which the Partnership may enter by virtue of its investment as a general or limited partner, where a member of the Wertheim Schroder Group also acts as general partner of such partnership.

5. An exemption from section 17(a) is consistent with the policy of the Partnerships and the protection of investors and necessary to promote the basic purpose of the Partnerships, as more fully discussed below with respect to the requested exemption from section 17(d) and rule 17d–1. The Partners will have been fully informed of the possible extent of the Partnerships' dealings with the Wertheim Schroder Group and, as successful professionals employed in the securities business, will be able to understand and evaluate the attendant risks. The community of interest among the Partners and the Wertheim Schroder Group is the best insurance against any risk of abuse in this regard.

6. An exemption is requested from section 17(d) of the Act and rule 17d–1 thereunder to the extent necessary to permit the Partnerships to engage in any transactions in which affiliated persons of the Partnerships (including the General Partners and members of the Wertheim Schroder Group), or affiliated persons of such affiliated persons, are participants. For example, the

Partnerships' investments may include, but will not be limited to (a) co-investments with the Wertheim Schroder Group in debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; (b) purchases or sales from or to the Wertheim Schroder Group of debt, equity, or similar securities of the same class or a different class of the same issuer, including Related Entities in which the Partnerships (directly or indirectly) and the Wertheim Schroder Group have an interest; and (c) purchases of limited partnership interests in equity partnerships (public or private) in which the Partnerships (directly or indirectly) or the Wertheim Schroder Group have an interest (e.g., as a limited partner), whether or not the equity partnerships were managed or sponsored by the Wertheim Schroder Group (as the general partner or adviser), or structured, underwritten, or arranged by the Wertheim Schroder Group.

7. The restrictions of section 17(d) and rule 17d–1 would undermine the principal rationale of the Partnerships, which is to provide a vehicle for Eligible Employees to invest with other employees, directors, officers, and entities that are members of the Wertheim Schroder Group. Because of the number and sophistication of the potential Partners of the Partnerships and persons affiliated with such Partners, strict compliance with section 17(d) would cause the Partnerships to forego investment opportunities simply because a Partner or other affiliated person of a Partnership, or an affiliated person of such an affiliated person, also had, or contemplated making, a similar investment. In addition, because attractive investment opportunities of the types considered by the Partnerships often require that each participant make available funds in an amount that may be substantially greater than may be available to a Partnership alone, the only way in which a Partnership may be able to take advantage of certain attractive opportunities will be as a participant with other persons, including affiliates. The flexibility to structure co- and joint investments in the manner described above will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. The concern that permitting co- and joint investments by the Wertheim Schroder Group or affiliated persons of the Wertheim Schroder Group on the one hand, and a Partnership on the other, might lead to less advantageous treatment of the Partnership should be mitigated by the fact that (a) the Wertheim Schroder Group, in addition to its substantial stake as a general and/or limited partner in partnerships in which the Partnerships will make investments and its investments in the Partnerships themselves, will be acutely concerned with its relationship with the key employees who invest in the Partnerships; and (b) principals of the Wertheim Schroder Group, including officers and directors of Holdings and Wertheim Schroder, will be investing in the Partnerships.

8. An exemption is requested from section 17(f) and rule 17f–1 to the extent necessary to permit the Wertheim Schroder Group to act as custodian without a written contract. Since there is such a close association between the Partnerships and the Wertheim Schroder Group, requiring a written contract would expose the Partnerships to unnecessary burden and expense where none is necessary. Furthermore, any securities of the Partnership held by the Wertheim Schroder Group will have the protection of fidelity bonds. An exemption is also requested from rule 17f–1(b)(4), as applicant does not believe the expense of retaining an independent accountant to conduct periodic verifications is warranted given the community of interest of all the parties involved and the existing requirement for an independent annual audit.

9. An exemption is requested from section 17(g) and rule 17g–1 to the extent necessary to permit the Partnerships to comply with rule 17g–1 by having a majority of the Managing Partners take such action and make such approvals as are set forth in the rule.

10. Section 17(j) and rule 17j–1 require that every registered investment company adopt a written code of ethics and every access person of a registered investment company report to the investment company with respect to transactions in any security in which the access person has, or by reason of the transactions acquires, any direct or indirect beneficial ownership in the security. Applicants request an exemption from rule 17j–1, with the exception of rule 17j–1(a), because they are burdensome and unnecessary and because the exemption is consistent with the policy of the Act. Requiring the Partnerships to adopt a written code of ethics and requiring access persons to report each of their securities transactions would be time-consuming and expensive, and would serve little purpose in light of, among other things, the community of interest among the Partners of the Partnerships by virtue of their common association in the Wertheim Schroder Group; the substantial and largely overlapping protections afforded by the conditions (as set forth below) with which applicants have agreed to comply; the concerns of the Wertheim Schroder Group that the employees who participate in the Partnerships actually receive the benefits they expected to receive when investing in the Partnerships; and the fact that the investments of the Partnerships will be investments that usually would not be offered to the Partners, including those Partners who would be deemed access persons, as individual investors. Accordingly, the requested exemption is consistent with the purposes of the Act, because the dangers against which section 17(j) and rule 17j–1 are intended to guard are not present in the case of the Partnerships.

11. Sections 30(a), 30(b), and 30(d), and the rules under those sections, require that registered investment companies file with the Commission and mail to their shareholders certain periodic reports and financial statements. The forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Partners. Exemptive relief is requested to the extent necessary to permit the Partnerships to report annually to the Limited Partners and the General Partners in the manner prescribed by the Partnership Agreement. An exemption also is requested from section 30(f) to the extent necessary to exempt the General Partners (including the Managing Partners) and any other persons who may be deemed members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16 of the Securities Exchange Act of 1934 with respect to their ownership of Interests in the Partnerships.

12. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all the parties and the fact that each Partnership is an "employees' securities company" as defined in section 2(a)(13) of the Act. Applicants further submit that a substantial community of economic and other interests exists among the Partners which obviates the need for protection of investors under the Act. The Partnerships were conceived and will be organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons

seeking to profit from fees or investment advice or from the distribution of securities. Applicants also submit that the terms of the proposed affiliated transactions will be reasonable and fair and free from overreaching. The exemptions are being requested because they are considered necessary or relevant to the operations of the Partnerships as an investment program uniquely adapted to the needs and desires of Eligible Employees of the Wertheim Schroder Group.

**Applicants' Conditions**

Applicants will comply with the following conditions if the requested order is granted:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if a majority of the Managing Partners determine that:

a. The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and

b. The transaction is consistent with the interests of the Partners, the Partnership's organizational documents and the Partnership's reports to its Partners.

In addition, the Managing Partners will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the Commission and its staff.[5]

2. In connection with the Section 17 Transactions, the Managing Partners will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

3. As a condition to the relief requested from section 17(d) and rule 17d–1, the Managing Partners will not invest the funds of any Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the Managing Partners sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, and on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) a member of the Wertheim Schroder Group; (c) an officer or director of a member of the Wertheim Schroder Group; (d) a Related Entity; or (e) a company in which a Managing Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this Condition "3," however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934, as amended (the "1934 Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

4. Each Partnership and the Managing Partners will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Partners, and each annual report of such Partnership required by the terms of the Partnership Agreement of the Initial Partnership, or the applicable partnership agreement of any Subsequent Partnership, as the case may be, to be sent to the Partners, and agree that all such records will be subject to examination by the Commission and its staff.[6]

5. The Managing Partners will send to each Partner who had an interest in each Nominal Account of the Initial Partnership and in each Subsequent Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the Managing Partners will make an appraisal or have an appraisal made of all of the assets of the Partnership in any Nominal Account as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the Managing Partners and deemed qualified by the Managing Partners to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets and liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the Managing Partners may revise the appraisal as they, in their good faith and sole discretion, deem appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the Managing Partners shall send a report to each person who was a Partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Partner of his or its federal and state income tax returns and a report of the investment activities of the Partnership during such year.

6. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a Wertheim Schroder Group director, officer or employee, such individual will not participate in the Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[6] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 90-051]

RIN 2115-AD61

### Double Hull Standards for Vessels Carrying Oil in Bulk; U.S. Position on International Standards for Tank Vessel Design

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice.

**SUMMARY:** International standards for new and existing tank vessel designs were developed and adopted by the International Maritime Organization (IMO) in March 1992. The U.S. has taken a position with IMO that the express approval of the U.S. Government would be necessary before these international tank vessel design standards will be enforced by the U.S. This is due to technical differences with the mandated requirements of the Oil Pollution Act of 1990 (OPA 90) and IMO's adopted international tank vessel design standards.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Gauvin, Project Manager, Merchant Vessel Inspection and Documentation Division (G-MVI-2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-1181.

**SUPPLEMENTARY INFORMATION:** Pursuant to OPA 90, the Coast Guard published an Interim Final Rule (IFR) on August 12, 1992, entitled Double Hull Standards for Vessels Carrying Oil in Bulk (57 FR 36222). The IFR established technical standards for double hulls on vessels carrying oil in bulk, as cargo or cargo residue, that are constructed or undergo a major conversion under contracts awarded after June 30, 1990. The IFR also included a phase-out schedule for existing single hulled tank vessels. The IFR amends sections of title 33, Code of Federal Regulations (CFR) part 157.

On March 6, 1992, the 32nd session of IMO's Marine Environment Protection Committee (MEPC 32), adopted Regulations 13F and 13G to Annex I of the International Convention for the Prevention of Pollution of Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Regulation 13F requires new tank vessels be designed and constructed with a double hull or mid-deck configuration. Regulation 13F is applicable to tank vessels of or over 600 deadweight tons (DWT) contracted on or after July 6, 1993, or which are delivered on or after July 6, 1996.

Regulation 13G establishes a phase-out schedule which begins on July 6, 1995, for existing single hulled tank vessels to be removed from service or converted into a double hull or mid-deck configuration. Regulation 13G is applicable to existing crude oil carriers of 20,000 DWT or over, or product carriers of 30,000 DWT or over. (For the convenience of the reader, Regulations 13F and 13G appeared as appendix in the IFR (57 FR 36236)).

On December 23, 1992, the U.S. Embassy in London deposited a declaration with IMO stating that the express approval of the U.S. Government will be necessary before Regulations 13F and 13G of MARPOL 73/78, would enter into force for the U.S. In this declaration, the U.S. cited the technical differences between MARPOL amendments for new and existing tankers, and OPA 90.

Compliance with Regulation 13F's double hull standards alone will not be sufficient to trade in the U.S. All foreign vessels which wish to operate in U.S. trade must document their compliance with OPA 90's double hull design standards by completing the requirements of 33 CFR 157.24.

Dated: July 14, 1993.

**Joseph J. Angelo,**

*Acting Chief, Office of Marine Safety, Security and Environmental Protection.*

[FR Doc. 93-17265 Filed 7-20-93; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Alpha Indian Rock Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (C) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Alpha Indian Rock Federal Savings and Loan Association, Manayunk, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on July 9, 1993.

Dated: July 15, 1993.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 93-17255 Filed 7-20-93; 8:45 am]

BILLING CODE 6720-01-M

[AC-30: OTS No. 6304]

### First Federal Savings and Loan Association of Englewood, Englewood, FL; Approval of Conversion Application

Notice is hereby given that on July 14, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Englewood, Englewood, Florida to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

Dated: July 15, 1993.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 93-17256 Filed 7-20-93; 8:45 am]

BILLING CODE 6720-01-M

[AC-29: OTS No. 0459]

### First Federal Savings and Loan Association of Wood County, Bowling Green, OH; Approval of Conversion Application

Notice is hereby given that on July 12, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Wood County, Bowling Green, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: July 15, 1993.

By the Office of Thrift Supervision.

**Nadine Y. Washington,**

*Corporate Secretary.*

[FR Doc. 93-17257 Filed 7-20-93; 8:45 am]

BILLING CODE 6720-01-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 clearance of a new information collection entitled "Application Package, United States Information Agency, Bureau of Educational and Cultural Affairs". Estimated burden hours per response is 20 hours. Respondents will be required to respond only one time.

**DATES:** Comments are due on or before August 20, 1993.

**COPIES:** Copies of the Request for Clearance (SF–83), 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) 619–5503; 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 (Paper Work Reduction Project: OMB No. 3116–XXXX) is estimated to average 20 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:* Application Package, United States Information Agency, Bureau of Educational and Cultural Affairs.

*Form Number:* None.

*Abstract:* This package contains a checklist, instructions and a number of forms needed to provide information necessary to complete the grant review by panel and Associate Director.

*Proposed Frequency of Responses:* No. of Respondents—2,000, Recordkeeping Hours—400, Total Annual Burden—40,000.

Dated: July 15, 1993.

**Rose Royal,**

*Federal Register Liaison.*

[FR Doc. 93–17253 Filed 7–20–93; 8:45 am]

BILLING CODE 8230–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Amendment of System of Records; New Routine Use Statement

Notice is hereby given that the Department of Veterans Affairs (VA) is amending a system of records entitled "Personnel and Accounting Pay System—VA" (27VA047), which is set forth on pages 942–943 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II."

VA is proposing to add a new routine use No. 27 to this system of records. This new routine use will specifically permit the disclosure of information concerning interns and residents employed at VA Medical Centers to the Health Care Financing Administration (HCFA) by means of a computer matching program. The purpose of this matching program is to assure that no VA intern or resident is counted as more than one full-time equivalent in accordance with program regulations governing Medicare payments to hospitals for medical education costs.

VA has determined that the release of information for this purpose is a necessary and proper use of the information in this system of records and that the new specific routine use for transfer of this information is appropriate. The provisions of the Computer Matching and Privacy Protection Act of 1988 do not apply to the proposed computer match with HCFA because the match seeks only to assure accurate counting of personnel in terms of Medicare billing. The match will not affect an individual's eligibility to a federal benefit program or lead to efforts to collect money owed by any individual as a result of participation in a federal benefits program.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Secretary (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, 20420. All relevant material received before August 20, 1993, will be considered. All written comments received will be available for public inspection in the Veterans Service Unit, room 170, at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until August 30, 1993.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new routine use statement is effective August 20, 1993.

Approved: July 13, 1993.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

### Notice of Amendment to System of Records

In the system of records identified as 27VA047, "Personnel and Accounting Pay System—VA," set forth on pages 942–943 of the **Federal Register** publication, "Privacy Act Issuances, 1991 Compilation, Volume II," the system is amended as follows:

* * * * *

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:*

* * * * *

27. Relevant information from this system of records concerning residents and interns employed at VA Medical Centers, including names, social security numbers, occupational titles, and dates of service, may be disclosed to the Health Care Financing Administration (HCFA) as part of an ongoing computer matching program. The purpose of this computer matching program is to help assure that no intern or resident is counted as more than one full-time equivalent in accordance with

program regulations governing Medicare education costs.

[FR Doc. 93-17203 Filed 7-20-93; 8:45 am]
BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 6, 1993.

**PLACE:** 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 93–17492 Filed 7–6–93; 3:19 pm]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 13, 1993.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 93–17493 Filed 7–19–93; 3:19 pm]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 20, 1993.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 93–17494 Filed 7–19–93; 3:19 pm]

BILLING CODE 6351–01–M

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**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, August 27, 1993.

**PLACE:** 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–254–6314.

**Jean A. Webb,**
*Secretary of the Commission.*

[FR Doc. 93–17495 Filed 7–19–93; 3:19 pm]

BILLING CODE 6351–01–M

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**FEDERAL MARITIME COMMISSION**

**TIME AND DATE:** 10:00 a.m., July 28, 1993.

**PLACE:** 1st Floor Hearing Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001.

**STATUS:** Closed.

**MATTER(S) TO BE CONSIDERED:**

1. Docket No. 92–12—*Save on Shipping, Inc. v. Puerto Rico Maritime Shipping Authority*—Consideration of the Record.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Secretary, (202) 523–5725.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 93–17471 Filed 7–19–93; 2:25 pm]

BILLING CODE 6730–01–M

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**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**TIME AND DATE:** 10:00 a.m., Thursday, July 29, 1993.

**PLACE:** Room 600, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Open and Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

**MATTERS TO BE CONSIDERED:** In Closed session, the Commission will consider and act upon the following:

1. *Secretary of Labor on behalf of Donald L. Gregory et al. v. Thunder Basin Coal Co.*, Docket No. WEST 92–279–D, etc. (Issues include whether the judge erred in dismission these proceedings because the Secretary refused to provide Thunder Basin with certain documents during discovery.)

In open session, the Commission will consider and act upon the following:

2. *Energy West Mining Co.*, Docket No. WEST 91–251. (Issues include whether the judge erred in concluding that Energy West's violation of 30 CFR 75.503 was of a significant and substantial nature and in assessing a civil penalty for the violation.)

3. *Aluminum Company of America*, Docket No. CENT 92–362–RM. (Issues include whether the judge erred in vacating an accident control order issued to Alcoa pursuant to 30 U.S.C. § 813(k) on the ground that the Secretary of Labor failed to prove that an accident had occurred.)

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen (202)653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: July 16, 1993.

**Jean H. Ellen,**
*Agenda Clerk.*

[FR Doc. 93–17387 Filed 7–19–93; 10:23 am]

BILLING CODE 6735–01–M

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, July 26, 1993.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 16, 1993

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*

[FR Doc. 93–17386 Filed 7–19–93; 10:22 am]

BILLING CODE 6210-01-P

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**U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE**

Open Forum on Children and Youth Services: Redefining the Federal Role for Libraries

**DATE AND TIME:** September 2, 9:00 a.m. to 4:30 p.m.

**PLACE:** California State Library, Room 500, 1001 6th Street, Sacramento, CA 95814.

**STATUS:** Open.

**PURPOSE OF THE FORUM:** Open forum on the changing role of the Federal government in support of library and information services, and literacy programs for children and youth. The forum provides and opportunity for representatives from elected officials, community advocacy groups and organizations, school library media centers, public libraries, academic libraries educational, literacy and information services organizations, companies, associations, and institutions to offer comments, observations, and suggestions related to Federal roles and responsibilities for library and information services, and literacy programs offered to children and youth.

Parties interested in presenting oral or written statements should notify Kim Miller or Peter Young at NCLIS, 1110 Vermont Avenue, N.W., Suite 820, Washington, D.C. 20005–3522 (202) 606–9200 by August 16, 1993. Written statements must be received at the NCLIS office by October 15, 1993.

To request further information or to make special arrangements for physically challenged persons, contact Kim Miller, NCLIS, no later than one week in advance of the forum.

Dated: July 15, 1993.

**Peter R. Young,**

*NCLIS Executive Director.*

[FR Doc. 93–17496 Filed 7–19–93; 3:20 pm]

BILLING CODE 7527–01–M

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**NATIONAL CREDIT UNION ADMINISTRATION**

**NOTICE OF PREVIOUSLY HELD EMERGENCY MEETING**

**TIME AND DATE:** 3:30 p.m., Thursday, July 15, 1993.

**PLACE:** Embassy Suites Hotel, 1881 Curtis Street, Denver, Colorado 80202.

**STATUS:** Closed.

**MATTERS CONSIDERED:**

1. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

The Board voted that agency business required that a meeting be held with less than the usual seven days advance notice. Earlier announcement of this was not possible.

The Board voted to close the meeting under the exemption stated above. General Counsel Robert Fenner certified that the meeting could be closed under the exemption.

**FOR MORE INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 93–17437 Filed 7–19–93 12:57 pm]

BILLING CODE 7535–01–M

# Corrections

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 435 and 436

[MB-001-FC]

RIN 0938-AA58

### Medicaid Program; Eligibility and Coverage Requirements

*Correction*

In rule document 93-880 beginning on page 4908 in the issue of Tuesday, January 19, 1993, make the following corrections:

1. On page 4927, in the first column, amendatory instruction 7. was omitted just before § 435.201, it should read as follows:

7. Section 435.201 is revised to read as follows:

2. On page 4932, in the second column, the heading above amendatory instruction 39. should read "§ 435.733 [Amended]".

3. On page 4935, in the first column, in amendatory instruction 5., in the second line, "§ 436.211" should read "§ 436.210."

BILLING CODE 1505-01-D

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

RIN 3150-AD80

### Training and Qualification of Nuclear Power Plant Personnel

*Correction*

In rule document 93-9651 beginning on page 21904 in the issue of Monday, April 26, 1993, make the following corrections:

§ 50.120 [Corrected]

On page 21912, in the first column, in § 50.120(b)(1), beginning in the second and sixth lines, "[October 25, 1993, publication]" should read "November 22, 1993" each time it appears.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 92-046]

### National Boating Safety Advisory Council; Applications for Appointment

*Correction*

In notice document 93-16705 beginning on page 38158, in the issue of Thursday, July 15, 1993, make the following correction:

On page 38159, in the first column, in the FR Doc. line, "93-16765" should read "93-16705".

BILLING CODE 1505-01-D

federal register

Wednesday
July 21, 1993

# Part II

# Department of Justice

**Prisons Bureau**
**28 CFR Parts 540, et al.**
**Control, Custody, Care, Treatment and Instruction of Inmates; Rules and Proposed Rules**

**Federal Prison Industries, Inc.**
**28 CFR Part 301**
**Inmate Accident Compensation; Proposed Rule**

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Parts 540, 541**

**RIN 1120 AA-02**

## Control, Custody, Care, Treatment and Instruction of Inmates; Visiting Regulations and Inmate Discipline

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons is amending its rules on Visiting Regulations and Inmate Discipline and Special Housing Units. The amendment makes minor procedural changes for the preparation of the visiting list; updates references to statutory penalties for providing or attempting to provide contraband to inmates; and makes other editorial changes. This amendment also clarifies visiting procedures for inmates in detention and special housing, and it makes a further clarification to the Bureau's general policy on loss of privileges. The intended effect of this amendment is to provide for the continued orderly operation of inmate visiting.

**EFFECTIVE DATE:** August 20, 1993.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is amending its rule on Visiting Regulations. A proposed rule on this subject was published in the **Federal Register** on February 8, 1991 (56 FR 5303 et seq.). A summary of public comment follows.

Several commenters disagreed with the proposed amendment to § 540.44(e) raising the age from 16 years to 18 years for visits by children unaccompanied by a responsible adult. The commenters stated the change appeared unnecessary and a punishment to imprisoned mothers or fathers and their children; that to change existing policy is unfair; and that because it is not always easy to find an adult to bring with you, the modification will make it more difficult for younger persons to visit. One of the commenters stated that children between the ages of 16 and 18 are, in many ways, treated as mature adults, and objected to the absence of statistical or anecdotal information concerning the number of children affected or problems with children in this age group. This commenter speculated that children of inmates are likely to be from one-parent or dysfunctional families where there may be no other adult to accompany them for a visit, and that most one-parent families are headed by women so that the proposal disproportionately affected women prisoners.

The Bureau recognizes the value of a child's visit to an inmate in maintaining family relationships, and its proposed revision was not intended to adversely impact on that value. The requirement for adult supervision was not intended to limit visitation access, but to prevent disruptions or security violations by a child lacking the maturity to understand the Bureau's visiting regulations or who is unable to fully comprehend or be held fully accountable for the ramifications of his or her actions. The Bureau wishes to consider further its response to comments and therefore has not adopted the proposed revision to § 540.44(e) in this document. The age requirement for unaccompanied visits by children remains at sixteen.

One commenter objected to the statutorily conforming amendment regarding fines and penalties for introducing or attempting to introduce contraband into an institution. This revision merely reflects the current statutory provision contained in 18 U.S.C. 1791.

Another commenter objected to the change in § 540.50(c) regarding visits to inmates not in regular population status, stating that the revision was a total change in visitation rights of prisoners in detention or segregated status. This commenter stated that the existing text prevents any staff member from interfering with the visits of immediate family members unless a violation of visiting privileges has occurred, and that under the revised rule, the Bureau of Prisons will do so.

The proposed rule was not intended to make a "total change" in the visitation rights of inmates in detention or segregation status. To indicate this, we have revised § 540.50(c) to make two clarifications. The first clarification is to indicate that the presumption against loss of visiting privileges is limited to incidents occurring while the inmate is in detention or segregation status, and does not interrupt or delay a loss of privilege sanction imposed while the inmate was in general population status prior to placement in detention or segregation status. The second clarification is that exceptions to the stated criteria for loss of an inmate's visiting privileges requires the inmate to receive a hearing before the Discipline Hearing Officer (DHO) in accordance with the provisions of 28 CFR 541.17, following those provisions which are appropriate to the circumstances. A loss of visiting privileges for other than visiting-related reasons requires a finding by the DHO that the inmate committed a prohibited act and that there is a lack of other appropriate sanctions or when imposition of the appropriate sanction upon the inmate previously has been ineffective. An inmate who disagrees with the loss of privilege may file a grievance under the administrative remedy procedure (see 28 CFR part 542). As a further clarification of its policy on loss of privileges, the Bureau is herein amending paragraph (g) of Table 4 in § 541.13. Paragraph (g) had specified that ordinarily loss of a privilege is used as a sanction in response to an abuse of that privilege. The paragraph had further specified, however, that the loss of certain privileges could be appropriate sanctions in some cases for misconduct not related to the privilege. As revised, paragraph (g) now states that the DHO or Unit Discipline Committee (UDC) may impose a loss of privilege sanction not directly related to the offense provided that the DHO or UDC determines there is a lack of other appropriate sanctions or when those sanctions have previously been ineffective. This revision provides the standard for the DHO or UDC to impose loss of privileges as a sanction not directly related to the offense. Finally, this document makes a nomenclature change by revising references to Security Levels which appear in Table 3 of § 541.13.

After due consideration of the comments received, the Bureau is adopting the proposal as a final rule with the modification to § 540.50(c) and the additional changes to § 541.13 as described above, and without revision to § 540.44(e).

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Interested persons may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

**List of Subjects in 28 CFR Parts 540 and 541**

Prisoners.

Dated: July 14, 1993.

James A. Meko,

*Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 540 and 541 in subchapter C of 28 CFR, chapter V are amended as set forth below.

## SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR 540 is revised to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

### § 540.40 [Amended]

2. Section 540.40 is amended by revising, in the last sentence, the word "insure" to read "ensure".

### § 540.50 [Amended]

3. In § 540.50, paragraph (b)(1) is amended by revising the phrase "Health Systems Administrator" to read "Health Services Administrator".

4. In § 540.50, paragraph (c) is revised to read as follows:

### § 540.50 Visits to inmates not in regular population status.

* * * * *

(c) Detention or segregation status—Ordinarily, an inmate retains visiting privileges while in detention or segregation status. Visiting may be restricted or disallowed, however, when an inmate, while in detention or segregation status, is charged with, or has been found to have committed, a prohibited act having to do with visiting guidelines or has otherwise acted in a way that would reasonably indicate that he or she would be a threat to the orderliness or security of the visiting room. Loss of an inmate's visiting privileges for other reasons may not occur unless the inmate is provided a hearing before the Discipline Hearing Officer (DHO) in accordance with the provisions of § 541.17 of this chapter, following those provisions which are appropriate to the circumstances, which results in a finding by the DHO that the inmate committed a prohibited act and that there is a lack of other appropriate sanctions or that imposition of an appropriate sanction previously has been ineffective. The Unit Discipline Committee (UDC) may not impose a loss of visiting privileges for inmates in detention or segregation status. The provisions of this paragraph (c) do not interrupt or delay a loss of visiting sanction imposed by the UDC or DHO prior to the inmate's placement in detention or segregation status.

5. In § 540.51, paragraph (g)(2) is amended by adding a comma after the word "embracing" in the first and in the second sentences, paragraph (g)(4) is amended by revising, in the first sentence, the word "officer" to read "visiting room officer", paragraph (b)(1) is revised, and paragraph (b)(4) is amended by revising the last sentence to read as follows:

### § 540.51 Procedures.

* * * * *

(b) * * *

(1) Staff shall ask each inmate to submit during the admission-orientation process a list of proposed visitors. After appropriate investigation, staff shall compile a visiting list for each inmate and distribute that list to the inmate and the visiting room officer.

* * * * *

(4) * * * The visiting guidelines shall include specific directions for reaching the institution and shall cite 18 U.S.C. 1791, which provides a penalty of imprisonment for not more than twenty years, a fine, or both for providing or attempting to provide to an inmate anything whatsoever without the knowledge and consent of the Warden.

* * * * *

## PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

6. The authority citation for 28 CFR part 541 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

7. In § 541.13, Table 3 is amended by revising in the description under the Prohibited acts column for Code 102 the phrases "Security level 2 through 6" and "Security level 1" to read "low, medium, and high security level," and "minimum" respectively, and by revising in the description under the Prohibited acts column for Code 200 the phrase "Security Level 1" to read "minimum"; Table 4 is amended by revising paragraph 2.(g) to read as follows:

### § 541.13 Prohibited acts and disciplinary severity scale.

* * * * *

Table 4—Sanctions

* * * * *

2. * * *

(g) *Loss of privileges:* The DHO or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege. However, the DHO or UDC may impose a loss of privilege sanction not directly related to the offense when there is a lack of other appropriate sanctions or when imposition of an appropriate sanction previously has been ineffective.

* * * * *

[FR Doc. 93–17237 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–05–P

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Parts 540 and 545**

**RIN 1120 AA-06**

## Control, Custody, Care, Treatment and Instruction of Inmates; Telephone Regulations and Inmate Financial Responsibility

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed Rule.

**SUMMARY:** In this document, the Bureau of Prisons is proposing to amend its rule on Telephone Regulations in order to provide for the operation of a debit billing system for inmates and to clarify references to loss of telephone privileges under institutional disciplinary sanctions. This document also proposes an amendment to the Bureau's rule on Inmate Financial Responsibility. The amendment states that an inmate who refuses participation in the inmate financial responsibility program is limited to one telephone call every three months, the minimum provided in existing § 540.100. These proposed amendments are intended to reduce generally the cost of telephone calls both for the Bureau and the parties involved, to continue to provide for the secure and safe operation of the institution, and to recognize the role of inmate financial responsibility.

**DATES:** Comments must be submitted by August 20, 1993.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, telephone (202) 307-3062.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is proposing to amend its rules on Telephone Regulations and on Inmate Financial Responsibility Program. A final rule on Telephone Regulations was published in the **Federal Register** June 29, 1979 (44 FR 38249) and was amended June 1, 1983 (48 FR 24622). A final rule on the Inmate Financial Responsibility Program was published in the **Federal Register** May 21, 1991 (56 FR 23477).

The Bureau of Prisons provides inmates with several means of communicating with the public. Primary among these is written correspondence, with visiting and telephone privileges serving as two alternate means of communications.

Current regulations in 28 CFR part 540, subpart I, stipulate that inmate calls shall ordinarily be made collect to the party called. In order to take advantage of the economies offered by the use of a debit billing system, the Bureau is amending its regulations to remove exclusive reference to the placement of collect telephone calls and to add procedures necessary to help protect the public from possible abuse of inmate telephone calls under the new billing system. To that end, the Bureau is redesignating §§ 540.101 through 540.105 as §§ 540.102 through 540.106 in order to add a new § 540.101 containing procedures necessary for the secure operation of the debit billing system and incorporating existing general telephone procedures previously stated in § 540.100. Under debit billing, the charges for most telephone calls will be less expensive than for equivalent calls placed under the current collect calling system. Inmate calls would be processed under the same rate structure regardless of the time of day or day of the week in which the call is placed. Telephone calls placed under the new system also would be less likely to be blocked during peak calling periods, such as holidays. A summary of the specific changes follows.

In § 540.100, a sentence is added to articulate the Bureau's purpose in extending telephone privileges to inmates, and a reference to the inmate financial responsibility program (28 CFR 545.11) is added. The inmate financial responsibility program offers inmates the opportunity to develop a financial plan designed to meet certain legitimate financial obligations (for example, court-ordered restitution, fines, or other federal government obligations) and to make payments toward fulfilling that plan. As proposed herein, a new paragraph (d)(10) of § 545.11 would specify that refusal by an inmate to participate in the financial responsibility program or to comply with the provisions of the financial plan ordinarily shall result in the inmate's being limited to placing no more than one telephone call every three months. This limitation is consistent with the minimum telephone call provisions contained in existing § 540.100. Any exception to this requires approval of the Warden. Section 540.100 is also amended to specify that an inmate may request to call a person of his or her choice. This change is necessary to reflect the use of the telephone list as a replacement for a collect call. Section 540.100 is further amended to clarify that restrictions on inmate telephone use may result from institutional disciplinary action. Ordinarily, such restriction will be imposed as the result of abuse of telephone use. The Bureau's procedures for institutional disciplinary action (see subpart B of 28 CFR 541) allow for imposition of the sanction in certain other circumstances.

New § 540.101 states the Warden shall permit an inmate who has not been restricted from telephone use to make at least one telephone call each three months. As noted above, this provision previously appeared in § 540.100. Paragraph (a) of new § 540.101 requires that an inmate telephone call ordinarily shall be made to a party identified on the inmate's official telephone list, which is prepared during admission and orientation. This list may contain up to twenty names. Upon such submission, the inmate shall acknowledge in writing that the person or persons on the list are agreeable to receiving a telephone call from the inmate and that any call made is for a purpose allowable under Bureau policy or institution guidelines, such as maintaining social contact with family and friends. Persons who have been approved for the inmate's visiting list ordinarily may be placed on the inmate's telephone list without further verification. Subject to staff approval, other persons may be placed on the telephone list upon receipt by staff of a completed telephone authorization form from the proposed telephone recipient. The inmate is responsible for mailing a telephone authorization form to proposed telephone call recipients. Paragraph (a) also allows an inmate the opportunity to submit changes to his or her telephone list. Paragraph (b) specifies that an inmate may not possess another inmate's telephone access code number, may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff. Paragraph (c) specifies that the placement and duration of any telephone call is subject to availability of inmate funds and that the maximum length for any call shall be determined by the Warden. The minimum length, subject to inmate availability of funds is ordinarily three minutes for each call, as specified in existing § 540.100. Paragraph (d) provides that the Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates housed in Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers, pretrial inmates, inmates in holdover status, and in cases of family emergencies.

Newly designated § 540.105 is amended to state that telephone expenses for which an inmate is responsible may include a fee for replacement of the inmate's telephone access code. A telephone access code is to be used in an institution which has implemented debit billing for inmate telephone calls. Under debit billing, an inmate has the opportunity to keep track of his or her telephone expenditures and is responsible for being aware of his or her account balance. Section 540.105 is further amended by allowing for the use of collect calls in certain circumstances and by removing extraneous examples. Newly designated § 540.106 is amended by removing discussion of restrictions on telephone privileges which result from institutional disciplinary action. Revised § 540.100 contains a reference to this matter, which is more completely addressed in subpart B of 28 CFR 541.

Interested persons may participate in this proposed rulemaking by submitting comments in writing to the previously cited address. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

**List of Subjects in 28 CFR Part 540 and 545**

Prisoners.

Dated: July 14, 1993.

**James A. Meko,**

*Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 540 and 545 in subchapter C of 28 CFR, chapter V are proposed to be amended as set forth below.

## SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

## PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

**Authority:** 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 540.100 is revised to read as follows:

**§ 540.100 Purpose and scope.**

The Bureau of Prisons extends telephone privileges to inmates as a supplemental means of maintaining community and family ties. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations set forth under the inmate financial responsibility program (see 28 CFR 545.11) and those which the Warden determines are necessary to ensure the security, good order, and discipline of the institution and to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

**§§ 540.101 through 540.105 [Redesignated as §§ 540.102 through 540.106]**

3. Sections 540.101 through 540.105 are redesignated as §§ 540.102 through 540.106.

4. New § 540.101 is added to read as follows:

**§ 540.101 Procedures.**

The Warden shall permit an inmate who has not been restricted from telephone use as the result of an institutional disciplinary action (see part 541, subpart B) to make at least one telephone call each three months.

(a) *Telephone list.* An inmate telephone call shall ordinarily be made to a party identified on the inmate's official telephone list. Ordinarily, this list may contain up to twenty names. Staff shall ask each inmate to submit during admission and orientation a list of proposed names and telephone numbers which the inmate wants to include on his or her telephone list. Upon such submission, the inmate shall acknowledge in writing that the person or persons on the list are agreeable to receiving a telephone call from the inmate and that any call made is to be for a purpose allowable under Bureau policy or institution guidelines, such as maintaining social contact with family and friends. Persons who have been approved for the inmate's visiting list ordinarily may be placed on the inmate's telephone list without further verification. Subject to staff approval, other persons may be placed on the list upon receipt by staff of a completed telephone authorization form from the proposed telephone call recipient. The inmate is responsible for mailing the telephone authorization form to each proposed telephone call recipient. The Warden may exercise discretion in approving or disapproving on grounds of a threat to institution security and good order, rehabilitative goals, or threat to the public. Any disapproval must be documented in writing. An inmate shall be allowed the opportunity to submit changes to the list on a quarterly basis.

(b) *Telephone access codes.* An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.

(c) *Placement and duration of telephone call.* The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The maximum length of a telephone call shall be determined by the Warden.

(d) *Exception.* The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates housed in Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers, pretrial inmates, inmates in holdover status, and in cases of family emergencies.

5. Newly designated § 540.105 is revised to read as follows:

**§ 540.105 Expenses of inmate telephone use.**

An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate telephone calls. In institutions which have implemented debit billing, each inmate is responsible for staying aware of his or her account balance. Third party billing and electronic transfer of a call to a third party are not permitted. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

**§ 540.106 [Amended]**

6. Newly designated § 540.106 is amended by removing the third sentence.

## PART 545—WORK AND COMPENSATION

6. The authority citation for 28 CFR part 545 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

7. In § 545.11, paragraph (d)(10) is added to read as follows:

**§ 545.11 Procedures.**

* * * * *

(d) * * *

(10) The inmate will not be allowed to place more than one telephone call every three months. Any exception to this requires approval of the Warden.

[FR Doc. 93–17236 Filed 7–20–93; 8:45 am]

BILLING CODE 4410–05–P

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## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 301

**RIN 1120–AA05**

### Inmate Accident Compensation

**AGENCY:** Federal Prison Industries, Inc., Bureau of Prisons, DOJ.

**ACTION:** Proposed Rule.

**SUMMARY:** In this document, the Bureau of Prisons is proposing to extend coverage under Inmate Accident Compensation to inmates participating in approved work assignments for other federal agencies. Because inmates participating in such assignments may be housed in a community corrections center, it is necessary to add procedures appropriate for treatment and reporting of injuries and for processing claims which may arise from such assignments. This amendment also clarifies the applicability of lost-time wages, clarifies the effects of subsequent incarceration, clarifies the definition of "release", clarifies payment procedures for medical treatment, and corrects a typographical error in the citation of a court case. This amendment is intended to allow for the continued efficient operation of inmate work assignments.

**DATES:** Comments due by September 7, 1993.

**ADDRESSES:** Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

**SUPPLEMENTARY INFORMATION:** The Bureau of Prisons is proposing to amend its regulations on Inmate Accident Compensation. A final rule on this subject was published in the Federal Register on March 12, 1990 (55 FR 9296).

Section 4125 of title 18 of the United States Codes allows for the use by Federal entities of inmate services in public works. This amendment would clarify the applicability of the Bureau's Inmate Accident Compensation to such work assignments by adding provisions for the reporting and treating of injuries and processing of claims which may arise in such assignments. Inmates participating in such assignments may be based in a community corrections center; consequently it is necessary to add provisions specific to that location. This includes clarification of the definition of "release" as it applies to inmates who suffer a work-related injury while housed at a community corrections center.

This amendment also clarifies that lost-time wages shall be available only for inmates based at Bureau of Prisons institutions (see new § 301.201) and that the amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established for the Department of Health and Human Services Medicare program (see § 301.317). This amendment also amends the definition of "release" in § 301.102 to include reference to pretrial inmates. This amendment also clarifies § 301.316 by rewording its provisions regarding subsequent incarceration of a compensation recipient. There is no change in the intent of this section. Finally, this amendment corrects a typographical error in the citation of the court case *U.S.* v. *Demko* which appears in § 301.319.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

**List of Subjects in 28 CFR Part 301**

Prisoners.

Dated: July 14, 1993.

**James A. Meko,**

*Acting Commissioner of Federal Prison Industries, and Acting Director, Bureau of Prisons.*

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p) and 0.99, it is proposed to amend part 301 of 28 CFR, chapter III as set forth below.

## CHAPTER III—FEDERAL PRISONS INDUSTRIES, INC., DEPARTMENT OF JUSTICE

## PART 301—INMATE ACCIDENT COMPENSATION

1. The authority citation for 28 CFR part 301 continues to read as follows:

**Authority:** 18 U.S.C. 4126, 28 CFR 0.99, and by resolution of the Board of Directors of Federal Prison Industries, Inc.

2. In § 301.101, paragraphs (a) and (b) are revised to read as follows:

**§ 301.101 Purpose and scope.**

* * * * *

(a) Inmate Accident Compensation may be awarded to former federal inmates or their dependents for physical impairment or death resultant from injuries sustained while performing work assignments in Federal Prison Industries, Inc., in institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities; or,

(b) Lost-time wages may be awarded to inmates assigned to Federal Prison Industries, Inc., to paid institutional work assignments involving the operation or maintenance of a federal correctional facility, or in approved work assignments for other federal entities for work-related injuries resulting in time lost from the work assignment.

3. In § 301.102, paragraph (b) is revised and paragraphs (d) and (e) are added to read as follows:

**§ 301.102 Definitions.**

* * * * *

(b)(1) For purposes of this part, the term "release" is defined as the removal of an inmate from a Bureau of Prisons correctional facility upon expiration of

sentence, parole, final discharge from incarceration of a pretrial inmate, or transfer to a community corrections center or other non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(2) In the case of an inmate who suffers a work-related injury while housed at a community corrections center, "release" is defined as the removal of the inmate from the community corrections center upon expiration of sentence, parole, or transfer to any non-federal facility, at the conclusion of the period of confinement in which the injury occurred.

(3) In the case of an inmate who suffers a work-related injury while housed at a community corrections center and is subsequently transferred to a Bureau of Prisons facility, "release" is defined as the removal of the inmate from the Bureau of Prisons facility upon expiration of sentence, parole, or transfer to a community corrections center or other non-federal facility.

* * * * *

(d) For purposes of this part, the term "work detail supervisor" may refer to either a Bureau of Prisons or a non-Bureau of Prisons supervisor.

(e) For the purposes of this part, the phrase "housed at" or "based at" a "Bureau of Prisons institution" shall refer to an inmate that has a work assignment with a Bureau of Prisons institution or with another federal entity and is incarcerated at a Bureau of Prisons institution. For the purposes of this part, the phrase "based at" or "housed at" a "community corrections center" shall refer to an inmate that has a work assignment for a non-Bureau of Prisons federal entity and is incarcerated at a community corrections center.

**§301.103 [Amended]**

4. Section 301.103 is amended by revising the phrase "institutional work assignments" to read "work assignments".

5. Section 301.104 is revised to read as follows:

**§301.104 Medical attention.**

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of the extent of the injury, the inmate shall immediately report the injury to his official work detail supervisor. In the case of injuries on work details for other federal entities, the inmate shall also report the injury as soon as possible to community corrections or institution staff, as appropriate. The work detail supervisor shall immediately secure such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injured inmate. First aid treatment may be provided by any knowledgeable individual. Medical, surgical, and hospital care shall be rendered under the direction of institution medical staff for all inmates based at Bureau of Prisons institutions. In the case of inmates based at community corrections centers, medical care shall be arranged for by the work supervisor or by community corrections center staff in accordance with the medical needs of the inmate. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment recommended by medical staff or by other medical professionals may result in denial of any claim for compensation for any impairment resulting from the injury.

6. Section 301.105 is revised to read as follows:

**§301.105 Investigation and report of injury.**

(a) After initiating necessary action for medical attention, the work detail supervisor shall immediately secure a record of the cause, nature, and exact extent of the injury. The work detail supervisor shall complete a BP–140, Injury Report (Inmate), on all injuries reported by the inmate, as well as injuries observed by staff. In the case of injuries on work details for other federal entities, the work supervisor shall also immediately inform community corrections or institution staff, as appropriate, of the injury. The injury report shall contain a signed statement from the inmate on how the accident occurred. The names and statements of all witnesses (e.g., staff, inmates, or others) shall be included in the report. If the injury resulted from the operation of mechanical equipment, an identifying description or photograph of the machine or instrument causing the injury shall be obtained, to include a description of all safety equipment used by the injured inmate at the time of the injury. Staff shall provide the inmate with a copy of the injury report. Staff shall then forward the original and remaining copies of the injury report to the Institutional Safety Manager for review. In the case of inmates based at community corrections centers, the work detail supervisor shall provide the inmate with a copy of the injury report and shall forward the original and remaining copies of the injury report to the Community Corrections Manager responsible for the particular community corrections center where the inmate is housed.

(b) The Institution Safety Manager or Community Corrections Manager shall ensure that a medical description of the injury is included on the BP–140 whenever the injury is such as to require medical attention. The Institution Safety Manager or Community Corrections Manager shall also ensure that the appropriate sections of BP–140, Page 2, Injury-Lost-Time Follow-Up Report, are completed and that all reported work injuries are properly documented.

7. In subpart B, §§301.201 through 301.204 are redesignated as §§301.202 through 301.205, and a new §301.201 is added to read as follows:

**§§301.201–301.204 [Redesignated as 301.202–301.205]**

**§301.201 Applicability.**

Lost-time wages shall be available only for inmates based at Bureau of Prisons institutions.

8. In §301.303, paragraph (a) is amended by revising the first and the fourth sentences, paragraphs (b) through (e) are redesignated as (c) through (f), a new paragraph (b) is added, and newly designated paragraph (d) is amended by revising the first sentence to read as follows:

**§301.303 Time parameters for filing a claim.**

(a) No more than 45 days prior to the date of an inmate's release, but no less than 15 days prior to this date, each inmate who feels that a residual physical impairment exists as a result of an industrial, institution, or other work-related injury shall submit an FPI Form 43, Inmate Claim for Compensation on Account of Work Injury. * * * The completed claim form shall be submitted to the Institution Safety Manager or Community Corrections Manager for processing.

(b) In the case of an inmate based at a community corrections center who is being transferred to a Bureau of Prisons institution, the Community Corrections Manager shall forward all materials relating to an inmate's work-related injury to the Institution Safety Manager at the particular institution where an inmate is being transferred, for eventual processing by the Safety Manager prior to the inmate's release from that institution.

* * * * *

(d) The claim, after completion by the physician conducting the impairment examination, shall be returned to the Institution Safety Manager or Community Corrections Manager for final processing. * * *

* * * * *

9. Section 301.316 is revised to read as follows:

**§ 301.316 Subsequent incarceration of compensation recipient.**

If a claimant, who has been awarded compensation on a monthly basis, is or becomes incarcerated at any federal, state, or local correctional facility, monthly compensation payments payable to the claimant shall ordinarily be suspended until such time as the claimant is released from the correctional facility.

10. Section 301.317 is amended by adding a sentence at the end to read as follows:

**§ 301.317 Medical treatment following release.**

* * * The amount of a payment for medical treatment is limited to reasonable expenses incurred, such as those amounts authorized under the applicable fee schedule established pursuant to 42 U.S.C. 1395w–4 for the Department of Health and Human Services Medicare program.

11. Section 301.319 is amended by revising the citation at the end to read as follows:

**§ 301.319 Exclusiveness of remedy.**

* * * *U.S.* v. *Demko*, 385 U.S. 149 (1966).

[FR Doc. 93–17235 Filed 7–20–93; 8:45 am]
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federal register

Wednesday
July 21, 1993

# Part III

# Department of Commerce

## Patent and Trademark Office

37 CFR Part 2

**Revision of Trademark Fees; Notice of Proposed Rulemaking**

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Part 2**

**[Docket No. 930508-3108]**

**RIN 0651-AA61**

## Revision of Trademark Fees

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Patent and Trademark Office (PTO) proposes to amend the rules of practice in patent and trademark cases, part 2 of title 37, Code of Federal Regulations. The PTO proposes that the fee amount for filing a trademark application be set at $245, in accordance with the applicable provisions of H.R. 2632. No other fees will be affected by this rulemaking.

**DATES:** Written comments must be submitted on or before August 20, 1993. A public hearing will not be held.

**ADDRESSES:** Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Robert Kopson, suite 507, Crystal Park 1, or by FAX to (703) 305-8525. Written comments will be available for public inspection in suite 507 of Crystal Park 1, at 2011 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Robert Kopson by telephone at (703) 305-8510 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** This proposed rule change would adjust the fee for filing a trademark application in accordance with the provisions of H.R. 2632. The proposed trademark fee increase is due to an expected funding shortfall for the trademark operation in fiscal year 1994. In order to collect the needed funds, and to keep the fee adjustment as limited as possible, only the trademark application fee is proposed to be increased.

The PTO will not adjust any other fees. The PTO's fiscal year 1994 operating expenses are approximately $21 million less than planned. This reduction is attributable to: (1) The policies of the Administration to effect administrative reductions throughout the Federal Government and to constrain growth in Federal employment levels; and (2) the actions of the General Services Administration in reappraising the agency's space rental costs which have resulted in a reduction in rental payments. These cost reductions preclude the need for a fee increase.

### Statutory Provisions

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials furnished by the PTO relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113(a)), as amended by Public Law 102-204, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the Consumer Price Index.

H.R. 2632, if enacted, would authorize the Commissioner to adjust the fee for filing a trademark application without regard to the fluctuations in the Consumer Price Index during the preceding twelve months.

Section 31 also allows new fee amounts to take effect thirty days after notice in the **Federal Register** and the Official Gazette of the Patent and Trademark Office.

### Recovery Level Determinations

The existing fee schedule, along with the proposed adjustment to the trademark application fee, would recover $518,692,000 in fiscal year 1994, as proposed in the Administration's budget request to the Congress.

Patent statutory fees are subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102-204. Of the total amount of section 41(a) and (b) income expected to be collected in 1994, $103 million must be deposited to the Fee Surcharge Fund for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The $103 million is deposited in a special account in the U.S. Treasury, reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process.

### Fee Analyses

In response to comments on the proposed fee adjustment for fiscal year 1993 (see 57 FR 21535), the PTO initiated a study of Patent Cooperation Treaty (PCT) fee amounts and maintenance fee amounts. The final results of these studies will be published in the notice of proposed rulemaking for fee adjustments to take effect in October 1994.

### General Procedures

Any fee amount that is paid on or after the effective date of the fee increase, would be subject to the new fees then in effect. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee, including trademark applications, to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of the rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

### Discussion of Specific Rules

*37 CFR 2.6 Trademark Fees*

Section 2.6, subparagraph (a)(1), if revised as proposed, would adjust the fee authorized by the Trademark (Lanham ) Act of 1946 in accordance with the provisions of H.R. 2632.

### Other Considerations

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); Executive Orders 12291 and 12612; and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this proposed rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). Less than 10 percent of the revenue generated in fiscal year 1994 will come from the payment of trademark fees. Small entities have the option of not registering their marks under the Federal system, but can choose to use their mark under common law. While the trademark application fee is proposed to be increased from $210 to $245, PTO has attempted to keep trademark application fees as low as practicable to encourage small entities to enter the trademark system. No other fees are proposed to be increased at this time.

The PTO has determined that this proposed rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be

less than $100 million. There would be no major increase in costs of prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**List of Subjects in 37 CFR Part 2**

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is proposing to amend title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

## PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

**Authority:** 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraph (a)(1) to read as follows:

**§ 2.6 Trademark fees.**

* * * * *

(a) Trademark process fees.

(1) For filing an application, per class.....$245.00

* * * * *

Dated: July 15, 1993.

**Michael K. Kirk,**

*Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.*

[FR Doc. 93–17289 Filed 7–20–93; 8:45 am]

BILLING CODE 3510–16–M

federal register

Wednesday
July 21, 1993

# Part IV

# The President

Executive Order 12855—Amendment to Executive Order No. 12852

Memorandum of July 19—Delegation of Authority Regarding the Horn of Africa Recovery and Food Security Act Reporting Requirement

Notice of July 20—Continuation of Iraqi Emergency

Federal Register
Vol. 58, No. 138
Wednesday, July 21, 1993

# Presidential Documents

Title 3—

The President

Executive Order 12855 of July 19, 1993

## Amendment to Executive Order No. 12852

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to amend Executive Order No. 12852, it is hereby ordered that Executive Order No. 12852 is amended by deleting the text of Section 3(d) of that order and inserting in lieu thereof the following text: "The Department of the Interior shall, on a reimbursable basis, provide such administrative services for the Council as may be required" and by deleting the words "Office of Administration in the Executive Office of the President" in Section 4 of that order and inserting the "Department of the Interior" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
*July 19, 1993.*

[FR Doc. 93-17557
Filed 7-20-93; 11:39 am]
Billing code 3195-01-P

# Presidential Documents

**Memorandum of July 19, 1993**

## Delegation of Authority Regarding the Horn of Africa Recovery and Food Security Act Reporting Requirement

**Memorandum for the Administrator of the Agency for International Development**

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including section 9 of the Horn of Africa Recovery and Food Security Act, Public Law 102–274, I hereby delegate to the Administrator of the Agency for International Development (AID) the functions vested in me by section 9 of that Act.

The Administrator of AID is authorized and directed to publish this memorandum is the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
*Washington, July 19, 1993.*

[FR Doc. 93–17564
Filed 7–20–93; 12:04 pm]
Billing code 6116–01–P

# Presidential Documents

Notice of July 20, 1993

## Continuation of Iraqi Emergency

On August 2, 1990, by Executive Order No. 12722, President Bush declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq. By Executive Orders Nos. 12722 of August 2, 1990, and 12724 of August 9, 1990, President Bush imposed trade sanctions on Iraq and blocked Iraqi government assets. Because the Government of Iraq has continued its activities hostile to United States interests in the Middle East, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, to deal with that emergency must continue in effect beyond August 2, 1993. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
*July 20, 1993.*

[FR Doc. 93-17565
Filed 7-20-93; 12:05 pm]
Billing code 3195-01-P

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**Last List July 8, 1993**

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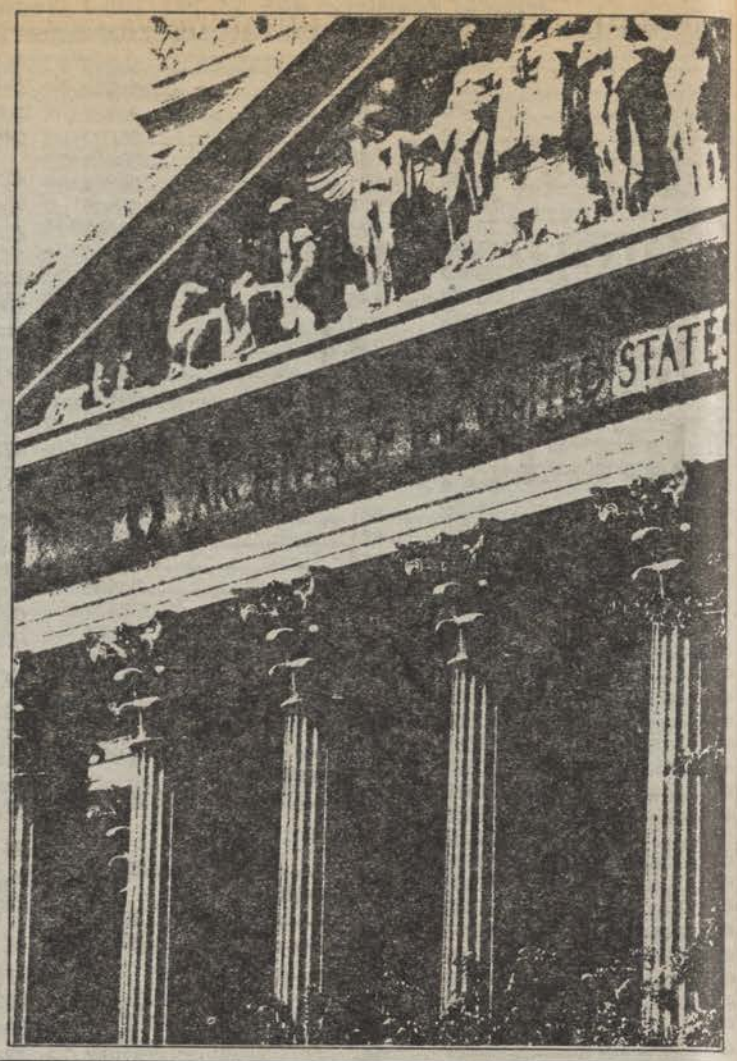


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Presidential Documents

Monday, January 23, 1989
Volume 25—Number 4

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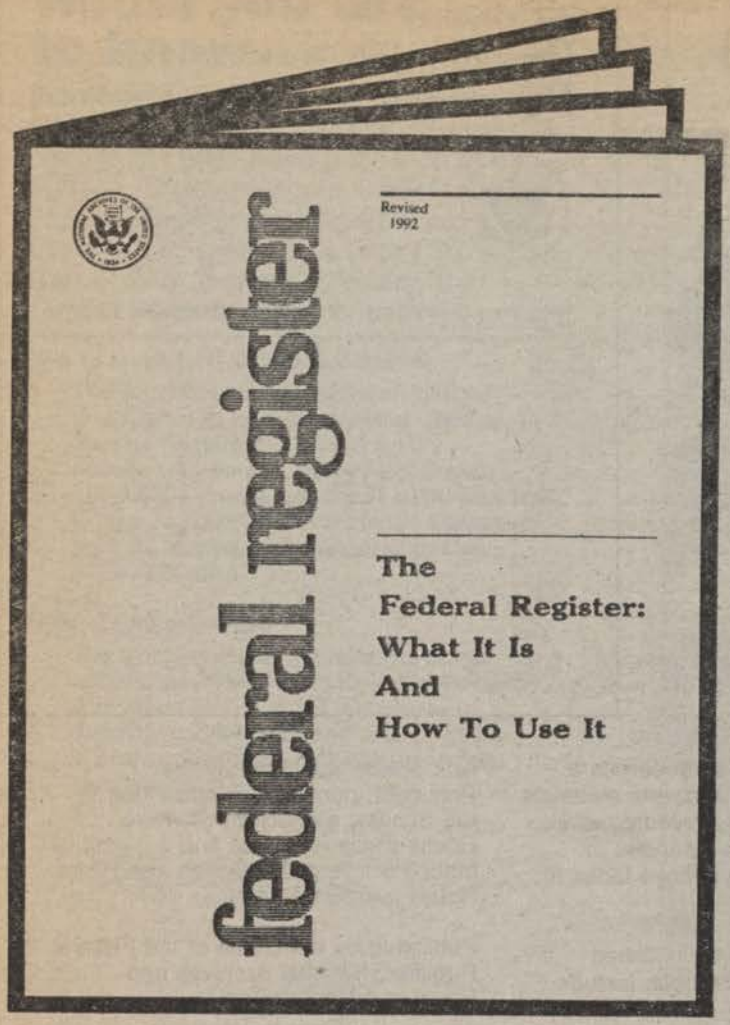


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