AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

10–13–93
Vol. 58 No. 196

federal register

Wednesday
October 13, 1993

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097–6326)

10–13–93
Vol. 58 No. 196
Pages 52875–53096

federal register

Wednesday
October 13, 1993

Briefings on How To Use the Federal Register
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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

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WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

(two briefings)

WHEN: October 19 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 6606 of October 7, 1993

Country Music Month, 1993

By the President of the United States of America

A Proclamation

Country music is one of America's unique musical forms. Our immigrant ancestors from Great Britain and Ireland brought their tunes and melodies with them, and those songs were reshaped by life and landscape in our new Nation. In Appalachia, the Piedmonts, the Ozarks, the Mississippi Delta, and the Pine Barrens, those songs and ballads were forged from the spirit of working men and women, farmers and field laborers, miners and railroad workers, and pioneers crossing the Great Plains.

They blended with songs of African Americans, Mexican Americans, and Cajuns. Out of this wellspring came Western swing, honky-tonk, blues, gospel, and shape note music, creating a family of many musical cousins. Country music is not one voice, but many, irresistible to the ear and to any heart that likes to sing. The instruments that accompany the songs are also from our ancestors of many lands—the dulcimer from Germany, the fiddle from all of Europe, the banjo from Africa.

Country music is about the American story. It fuses the traditions of many cultures and celebrates what makes us Americans. Country lyrics tell tales of life and love, joy and heartbreak, toil and celebration. From early folk singers like Woody Guthrie to such legends as Roy Acuff, Hank Williams, and Patsy Cline to today's bright stars—the singers all let loose the soulful music inside their hearts. In its rhythms and words, we can hear the lonesome sound, as well as the festive spirit, of our beloved land.

The Congress, by Senate Joint Resolution 102, has designated the month of October as "Country Music Month." I urge all Americans to join me in recognizing the role that country music has played in shaping our cultural heritage.

Country Music Month is a time to recognize the contributions of singers, songwriters, musicians, and all in the industry who work to bring us the very best of country music and dance. Throughout the month of October, let us celebrate country music in our homes and towns across the United States.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1993 as Country Music Month.

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

William J. Clinton

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

RIN 3206–AF42

Implementation of the Freedom of Information Act

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This action renders final the changes to agency regulations implementing the Freedom of Information Act previously published by OPM as an interim rule. Because no comments were received, the interim rule making editorial changes to clarify and improve OPM's regulations implementing the Freedom of Information Act (FOIA) is effective as published.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie Crawford, (703) 908–8565.

SUPPLEMENTARY INFORMATION: OPM published interim regulations on June 8, 1993 (58 FR 32043) which made editorial changes to OPM's regulations implementing the FOIA. OPM received no comments in response to the interim rulemaking.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12292, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because costs associated with requesting information under the Freedom of Information Act are not affected.

List of Subjects in 5 CFR Part 294

Freedom of information.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, under the authority of 5 U.S.C. 552, the inertim rule amending 5 CFR 294, which was published at 58 FR 32043 on June 8, 1993, is adopted as a final rule without change.

[FR Doc. 93–25055 Filed 10–12–93; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Parts 831, 838, 842, and 890

RIN 3206–AF66

Payment of Survivor Deposits by Actuarial Reduction

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement section 11004 of the Omnibus Budget Reconciliation Act of 1993. The Act requires OPM to reduce a retiree's annuity instead of collecting a deposit when the retiree marries during retirement and elects to provide a survivor annuity for the new spouse. These regulations comply with the requirement that OPM establish, by regulation, the method for computing the actuarial reduction on an actuarial basis. These regulations also reorganize OPM's survivor elections and survivor annuity regulations for the Civil Service Retirement System to group together sections on similar subjects and provide a more detailed table of contents to make the regulations easier to use.

DATES: Interim rules effective October 1, 1993; comments must be received on or before December 13, 1993.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION:

1. Change in Law on Deposits for Post-Retirement Survivor Elections

Under the retirement law in effect before October 1, 1993, a retiree who marries after retirement and elects to provide a survivor annuity for his or her spouse must pay a deposit. The deposit represents the difference between the annuity actually paid since retirement and the amount the retiree would have received with a survivor reduction; interest is added at the rate of 6 percent per year. The retiree must either send OPM the full amount of the deposit in a lump sum or authorize OPM to deduct 25 percent of the retiree's annuity until the deposit has been completed. If the retiree dies before completing the deposit, the full survivor benefit is offset until the balance of the deposit is entirely paid off. A retiree electing to provide a survivor annuity for a former spouse must also make a deposit.

Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM will no longer collect these deposits in either a lump sum or by installments. Instead, OPM is now required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefits. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under sections 8343a and 8420a of title 5, United States Code. (Section 11004 limits the maximum reduction to 25% of the full annuity, but we expect that in most cases the reduction will be less than 5% of the annuity.) Conceptually, the amended law would in essence lend the amount of the deposit to the annuitant who then repays the "loan" through a reduction in annuity payments over his or her lifetime. The effect of this change is to spread the reduction over the remaining life expectancy of the retiree. Future cost-of-living adjustments on the retiree's annuity are applied to the reduced amount. Under no circumstances would the survivor have to complete the deposit, as under the old law, because the need to make a deposit is eliminated when the permanent actuarial reduction is established.

The new law has no effect on the normal reduction in a retiree's annuity to provide survivor benefits for his or her spouse. Under FERS, this reduction remains at 10 percent of the annuity on which the survivor annuity is based, and, under CSRS rules, 2½ percent of the first $3600 per year, plus 10 percent of the amount over $3600. The actuarial reduction is in addition to the normal reduction based on these percentages.

The effective date of the statutory change is October 1, 1993. The new law applies to all deposits on which no payments have been made before the effective date. If the deposit has been partially paid prior to October 1, 1993, OPM must determine the amount of the remaining deposit and establish the actuarial reduction on the basis of that amount.

2. Reorganization of Regulations on Survivors Elections and Annuities

The current CSRS regulations on survivor elections are included in subpart F of part 831 of title 5, Code of Federal Regulations, along with the regulations concerning survivor annuities. These regulations were revised in 1985 as part of our implementation of the Civil Service Retirement Spouse Equity Act of 1984, Pub. L. 98–615, enacted November 8, 1984. As subsequent legislation required additional regulations, new sections were added at the end of the current regulations. This has produced a regulatory structure (containing 30 sections) that is difficult to use. Accordingly, we have reorganized the current regulatory provisions to provide a more coherent structure that will be easier to use.

In this reorganization, we are not changing any regulatory text. We are only changing section numbers and placing labels on groups of sections containing similar subject matter. The corresponding FERS regulations are already organized in three distinct subparts (survivor elections in subpart F of part 842, spousal annuities in subpart C of part 843, and children's annuities in subpart D of part 843) and, therefore, do not require a similar reorganization.

3. Section Analysis of Regulations To Implement the Statutory Change

A definition of "present value factor" is added to sections 831.603 and 842.602. This definition is the same one used in the regulations governing computation of the actuarial reduction associated with the alternative form of annuity.

These regulations also add sections 831.663 and 831.664 to the reorganized CSRS regulations to implement the statutory change discussed above. Section 831.663 establishes the methodology for applying the actuarial reduction to new deposits under section 11004(c)(1) of the statute. Section 831.664 establishes corresponding rules for partially paid deposits under section 11004(c)(2) of the statute.

Paragraph (a) of each section states to whom the section applies. Section 831.663 applies to retirees who have not paid any portion of the deposit before the statutory change became effective on October 1, 1993. Section 831.664 applies to retirees who have made partial lump-sum payments or who have partially completed the deposit by installments taken from annuity payable for periods before October 1, 1993. Section 831.664, not § 831.663, applies to retirees who have partially paid the deposit from the annuity payment for September 1993 (which is paid on October 1, 1993). Since any installment paid from the check dated October 1, 1993, accrued before the effective date of the law, we will treat any installment collected from a CSRS annuity check issued on October 1, 1993, as an installment correctly taken under the old law.

Paragraph (b) of each section restates the statutory requirement that a permanent actuarial reduction is the exclusive method for paying the deposit under the new law. Retirees do not have the option to pay the deposit in order to avoid the actuarial reduction.

Paragraph (c) of each section states the commencing date of the reduction. For cases in which we have not collected part of the deposit under the old law, § 831.663 provides that the reduction begins on the same date as the regular survivor reduction under section 8339 of title 5, United States Code. For cases in which we have collected part of the deposit and must convert the remaining balance to an actuarial reduction, § 831.664 provides that the reduction starts from annuity accruing on October 1, 1993, the effective date of the statute.

Paragraph (d) of each section provides the methodology for computing the actuarial reduction. For cases in which we will be converting the remaining balance of a partially paid deposit under § 831.664, we divide the amount of the remaining balance by the present value factor (as we currently do for the alternative form of annuity) to compute the monthly reduction. The present value factor will be the one for the retiree's age on October 1, 1993. If this method results in a reduction of greater than 25 percent, we reduce the annuity by 25 percent. The method for "new" deposits under § 831.663 is essentially the same except that the 25-percent limit applies to the sum of all actuarial reductions (if more than one), not to each individually, and the present value factor will be the one for the retiree's age on the commencing date of the reduction under paragraph (c).

The actuarial reduction is in addition to the regular survivor reduction. The 25-percent limit applies only to the actuarial reduction. The combined total may exceed 25 percent of the self-only annuity, but we expect it will do so in less than 5 percent of the cases.

Paragraph (e) of both sections restates the statutory provision that the reduction terminates when the retiree dies. The survivor annuity is not affected by the actuarial reduction in the retiree's annuity. Whether the retiree's reduction remains in effect for many years or only a short time, the survivor is not liable for any amount of the deposit that formed the basis for the actuarial reduction.

If the retiree died before October 1, 1993, the statutory change is inapplicable. The existing regulation that states the requirement that the survivor complete any remaining unpaid deposit in those cases has been redesignated as § 831.665.

For FERS, paragraphs (b) through (d) of § 842.615 of Title 5, Code of Federal Regulations, correspond to §§ 831.663 through 831.665 of the CSRS regulations with one difference. The CSRS provisions for conversion of partially paid deposits apply to two types of deposits for survivor elections under noncodified statutes applicable only to retirees who retired before May 7, 1985. FERS began in 1987.

The following three charts contain the present value factors that will apply beginning on October 1, 1993. These present value factors are the same as the factors currently applicable for the alternative form of annuity.

CSRS PRESENT VALUE FACTORS

Age	Reduction factor
40	322.9
41	317.7
42	312.3
43	306.9
44	301.4
45	293.4
46	285.2
47	277.8
48	270.2
49	263.8
50	257.6
51	251.2
52	245.1
53	239.1
54	232.1
55	225.1

CSRS PRESENT VALUE FACTORS—Continued

Age	Reduction factor
56	218.7
57	213.1
58	207.5
59	202.3
60	197.9
61	192.4
62	186.2
63	180.4
64	174.3
65	168.4
66	162.6
67	157.4
68	151.3
69	145.1
70	139.8
71	133.9
72	128.2
73	122.6
74	117.1
75	111.6
76	106.4
77	101.3
78	96.4
79	91.6
80	86.9
81	82.3
82	77.9
83	73.7
84	69.7
85	65.9
86	62.3
87	58.8
88	55.6
89	52.5
90	49.6

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES

Age	Reduction factor
40	171.8
41	171.7
42	171.5
43	171.4
44	171.2
45	170.0
46	168.8
47	167.9
48	166.9
49	166.4
50	166.0
51	165.7
52	165.5
53	165.4
54	164.9
55	164.5
56	164.6
57	165.1
58	165.9
59	167.3
60	169.5
61	171.2
62	169.3
63	164.4
64	159.4
65	154.3
66	149.5

FERS PRESENT VALUE FACTORS FOR REGULAR EMPLOYEES—Continued

Age	Reduction factor
67	145.1
68	139.9
69	134.5
70	129.8
71	124.8
72	119.8
73	114.9
74	110.0
75	105.2
76	100.5
77	95.9
78	91.4
79	87.0
80	82.8
81	78.7
82	74.6
83	70.7
84	67.1
85	63.5
86	60.1
87	56.9
88	53.9
89	50.9
90	48.2

FERS PRESENT VALUE FACTORS FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AIR TRAFFIC CONTROLLERS, AND MILITARY RESERVE TECHNICIANS WHO RETIRE UNDER 5 U.S.C. 8414(C) BY REASON OF DISABILITY

Age	Reduction factor
40	274.0
41	270.3
42	266.5
43	262.7
44	258.7
45	252.8
46	246.8
47	241.3
48	235.7
49	230.9
50	226.1
51	221.3
52	216.5
53	211.7
54	206.3
55	200.8
56	195.7
57	191.1
58	186.7
59	182.5
60	178.9
61	174.4

(Age 62 and over, see table for regular employees)

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and to make these rules effective in less than 30 days. The regulations are effective October 1, 1993, the effective date of the statutory change. The statute requires OPM to establish by regulation the method for computing the actuarial reduction. The statute was enacted on August 10, 1993, and affects benefits accruing on or after October 1, 1993. Considering these time frames, publication of a general notice of proposed rulemaking or the normal 30-day delay in effective date is impracticable. Delaying implementation of these regulations would be contrary not only to the statutory provision itself, but would also be contrary to the public interest. The statute that these regulations implement was intended to alleviate a financial hardship on retirees and their families. Delaying implementation of these regulations would unnecessarily prolong that hardship. Although later adjustments could be retroactive to October 1, 1993, such adjustments would be costly to the Government and could seriously harm entitled persons with an immediate need for payment.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects

5 CFR Parts 831 and 842

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 838

Administrative practice and procedure, Claims, Courts, Disability benefits, Government employees, Income taxes, Pensions, Retirement.

5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professionals, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, as follows:

PART 831—RETIREMENT

1. The authority citation for part 831 of title 5, United States Code, is revised to read as follows:

Authority: 5 U.S.C. 8347: § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105–508, 104 Stat. 1388–339; § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964–1965 Comp.; § 831.663 also issued under 5 U.S.C. 8339 (j) and (k)(2); §§ 831.663 and 831.664 also issued under section 11004(c)(2) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66; § 831.682 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99–251, 100 Stat. 23; subpart S also issued under 5 U.S.C. 8345(k); subpart V also issued under 5 U.S.C. 8343a and section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330–275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; 104 Stat. 1388–328.

2. Section 831.603 is amended by adding in alphabetical order a definition of the term "present value factor" to read as follows:

§ 831.603 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

* * * * *

PART 838—[AMENDED]

3. The authority citation for part 838 continues to read in part as follows:

Authority: 5 U.S.C. 8347(a) and 8461(g). * * *

PART 890—[AMENDED]

4. The authority citation for part 890 continues to read in part as follows:

Authority: 5 U.S.C. 8913; * * *

§§ 831.105, 831.112, 831.601, 831.603, 831.604, 831.605, 831.606, 831.607, 831.611, 831.612, 831.613, 831.614, 831.619, 831.620, 831.621, 831.622, 831.623, 831.624, 831.626, 831.628, 831.629, 831.630, 831.2203, 838.711, 838.733, 838.921, 838.922, 838.1006, 838.1016, 890.803, 890.805 [Amended]

5. In the list below, for each section and paragraph indicated in the left two columns, remove the reference indicated in the third column where it appears in the paragraph, and add the reference (and text) indicated in the fourth column:

Section	Paragraph	Remove	Add
831.105	(h)	831.612	831.631.
831.105	(h)	831.613	831.632.
831.105	(h)	831.621	831.682.
831.105	(h)	831.623	831.684.
831.105	(j)	831.629	831.662.
831.112	(c)	831.607	831.614.
831.601	(b)	831.621	831.682.
831.601	(b)	831.622	831.683.
831.603	"Current spouse annuity"	831.618	831.642.
831.603	"Former spouse"	831.621	831.682.
831.603	"Former spouse"	831.622	831.683.
831.604	(a)(1)	831.605(b)	831.612(b).
831.604	(a)(1)	831.607	831.614.
831.604	(b)	831.608	831.618.
831.604	(c)	831.614	831.641.
831.604	(d)(1)(ii)	831.613	831.631.
831.605	(b)	831.607	831.614.
831.605	(b)	831.608	831.618.
831.605	(e)	831.612 (two occurrences)	831.632.
831.605	(f)(1)(ii)	831.612	831.632.
831.606	(a)	831.604(a)	831.611(a).
831.606	(c)(1)	831.604(a)(1)	831.611(a)(1).
831.606	(c)(2)	831.604(a)(1)	831.611(a)(1).
831.606	(c)(2)(ii)	831.609	831.621.
831.606	(c)(2)(iii)	831.628	831.685.
831.606	(c)(3)	831.611(b)	831.622(b).
831.606	(c)(3)	831.628	831.685.
831.606	(c)(4)	831.611(b)	831.622(b).
831.606	(c)(4)	831.628	831.685.
831.606	(c)(5)(iii)	831.612	831.632.
831.606	(h)(1)	831.605(d)	831.612(d).
831.606	(h)(1)	831.612	831.632.
831.606	(k)(1)	831.613	831.631.
831.606	(k)(2)(i)	831.613	831.631.
831.606	(k)(2)(ii)	831.613	831.631.
831.607	(a)	831.608	831.618.
831.611	(a)	831.621	831.682.
831.611	(a)	831.623	831.684.

Section	Paragraph	Remove	Add
831.611	(a)	831.628	831.685.
831.611	(b)(1)	831.606	831.613.
831.611	(b)(2)	831.614	831.641.
831.611	(b)(3)	831.629	831.662.
831.611	(b)(5)	831.604	831.611.
831.611	(b)(7)	831.614 (two occurrences)	831.641.
831.612	(b)(1)	831.614	831.641.
831.612	(b)(2)(ii)	831.604	831.611.
831.612	(b)(2)(ii)	831.605	831.612.
831.612	(b)(2)(ii)	831.613	831.631.
831.612	(b)(3)(i)	831.607(c)	831.614(c).
831.612	(b)(3)(i)	831.608	831.618.
831.612	(b)(3)(ii)	831.604(a)(1) or (a)(2)	831.611(a)(1) or (a)(2).
831.612	(e)(1)(ii)	831.612	831.632.
831.613	(b)(2)(i)(A)	831.604	831.611.
831.613	(b)(2)(i)(B)	831.608	831.618.
831.613	(b)(2)(ii)(A)	831.607	831.614.
831.613	(b)(2)(ii)(B)	831.607	831.614.
831.613	(b)(4)(ii)	831.618	831.642.
831.613	(c)(1)	831.614	831.641.
831.613	(c)(2)	831.605	831.612.
831.613	(c)(2)	831.612	831.632.
831.613	(c)(2)	831.614	831.641.
831.613	(c)(2)	831.614(c)	831.641(c).
831.614	(a)	831.621	831.682.
831.614	(a)	831.622	831.683.
831.614	(c)(3)	831.613	831.631.
831.619	(b)	831.622 (two occurrences)	831.683.
831.620	(b)(2)(i)	831.622	831.683.
831.621	(e)(3)	831.624	831.665.
831.621	(f)(2)	831.621(b)(4)	Paragraph (b)(4) of this section.
831.621	(l)	831.622	831.683.
831.622	(a)(1)(iv)	831.619(b)	831.643(b).
831.622	(a)(2)(iii)	831.619(b)	831.643(b).
831.622	(c)	831.619(b)	831.643(b).
831.623	(c)(3)	831.624	831.665.
831.624	(a)	831.611	831.622.
831.624	(a)	831.612	831.631.
831.624	(a)	831.613	831.632.
831.624	(a)	831.621	831.682.
831.624	(a)	831.623	831.684.
831.624	(a)	831.628	831.685.
831.624	(b)	831.621	831.682.
831.624	(b)	831.623	831.684.
831.624	(b)	831.621(e)	831.682(e).
831.624	(b)	831.623(c)	831.684(c).
831.624	(c)	831.612	831.631.
831.624	(c)	831.613	831.632.
831.624	(d)	831.612	831.631.
831.624	(d)	831.613	831.632.
831.624	(d)	831.621	831.682.
831.624	(d)	831.623	831.684.
831.624	(e)	831.611	831.622.
831.624	(e)	831.628	831.685.
831.624	(e)	831.629	831.662.
831.626	(a)	831.604	831.611.
831.626	(a)	831.611	831.622.
831.626	(b)	831.604	831.611.
831.626	(b)	831.611	831.622.
831.626	(c)	831.604	831.611.
831.626	(c)	831.611	831.622.
831.628	(a)	831.606	831.613.
831.628	(b)(2)	831.614	831.641.
831.628	(b)(3)(i)	831.629	831.662.
831.628	(b)(5)	831.604	831.611.
831.628	(c)	831.614 (two occurrences)	831.641.
831.629	(only)	831.611(b) (two occurrences)	831.622.
831.629	(only)	831.628 (two occurrences)	831.685.
831.630	(a)	831.625	831.644.
831.630	(b)	831.613	831.631.
831.630	(c)	831.612	831.632.
831.630	(c)	831.621	831.682.
831.701	(d)	831.620	831.651.

Section	Paragraph	Remove	Add
831.2203	(c)	831.608	831.618.
831.2203	(f)	831.607	831.614.
831.2203	(g)	831.605(a) or (b)	831.611(a) or (b).
831.2203	(g)(2)	831.605(a) or (b)	831.611(a) or (b).
838.711	(a)	831.614	831.641.
838.733	(a)(2)	831.604	831.611.
838.733	(a)(2)	831.605	831.612.
838.733	(a)(2)	831.612	831.631.
838.733	(a)(2)	831.613	831.632.
838.921	(a)	831.614	831.641.
838.921	(b)(1)	831.614	831.641.
838.922	(a)	831.614	831.641.
838.1006	(c)(3)	831.614	831.641.
838.1006	(d)(3)	831.607	831.614.
838.1016	(a)	831.614	831.641.
890.803	(a)(3)(ii)	831.621	831.682.
890.803	(a)(3)(ii)	831.622	831.683.
890.803	(a)(3)(iii)	831.622	831.683.
890.805	(a)(2)(i)	831.621	831.682.
890.805	(a)(2)(ii)	831.622	831.683.

6. Section 831.665, is added to read as follows:

§ 831.665 Payment of deposits under § 831.631, § 831.632, § 831.682, or § 831.684 under pre-October 1, 1993, law or when the retiree has died prior to October 1, 1993. [Reserved]

§§ 831.604 through 831.630 [Redesignated]

7. Sections 831.604 through 831.630 are redesignated as follows:

Old section	New section
831.612	831.632.
831.613	831.631.
831.614	831.641.
831.615	831.671.
831.616	831.672.
831.617	831.673.
831.618	831.642.
831.619	831.643.
831.620	831.651.
831.621	831.682.
831.622	831.683.
831.623	831.684.
831.624(a)	831.661.
831.624(b)	831.665.(a)
831.624(c)	831.665.(b)
831.624(d)	831.665.(c)
831.624(e)	[removed]
831.625	831.644.
831.626	831.616.
831.627	831.681.
831.628	831.685.
831.629	831.662.
831.630	831.645.
831.605	831.612.
831.606	831.613.
831.607	831.614.
831.608	831.618.
831.609	831.621.
831.610	831.619.
831.611	831.622.
831.604	831.611.

Subpart F—Survivor Elections and Annuities

8. Subpart F is amended by removing and reserving §§ 831.615 and 831.617 and adding an undesignated centerheading immediately before the section listed in the left column as follows:

Section	Undesignated centerheading
831.601	Organization and Structure of Regulations on Survivor Annuities.
831.611	Elections at the Time of Retirement.
831.621	Changes of Survivor Elections.
831.631	Post-Retirement Elections.
831.641	Eligibility.
831.651	Payment of Survivor Annuities.
831.661	Survivor Election Deposits.
831.671	Children's Annuities.
831.681	Regulations Pertaining to Noncodified Statutes.

9. In newly redesignated § 831.661, the section heading is revised to read as follows:

§ 831.661 Deposits not subject to waiver.

10. In newly redesignated § 831.662, the section heading is revised to read as follows:

§ 831.662 Deposits required to change an election after final adjudication.

11. Section 831.663 is added to read as follows:

§ 831.663 Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631 or § 831.632 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on the same date as the annuity reduction under § 831.631 or § 831.632.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the deposit under § 831.631 or § 831.632 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (c) of this section (plus any previous reduction(s) in the retiree's annuity required under this section § 831.664); or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction under paragraph (c) of this section.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25

percent of the rate of the reinstated or new self-only annuity).

12. Section 831.664 is added to read as follows:

§ 831.664 Post-retirement survivor election deposits that were partially paid before October 1, 1993.

(a) *Applicability of this section.* This section applies to all retirees who are required to pay deposits under § 831.631, § 831.632, § 831.682, or § 831.684 and have paid some portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(b) *Other methods of payment not available.* Retirees described in paragraph (a) of this section must have a permanent annuity reduction computed under paragraph (d) of this section.

(c) *Commencing date of the reduction.* A reduction under this section commences on October 1, 1993.

(d) *Computing the amount of the reduction.* The annuity reduction under this section is equal to the lesser of—

(1) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(2) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(e) *Termination of the reduction.* (1) The reduction under this section terminates on the date that the retiree dies.

(2) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (d) of this section by any cost-of-living adjustments under section 8340 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjustment reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM; BASIC ANNUITY

13. The authority citation for part 842 continues to read as follows:

Authority: 5 U.S.C. 8461(g); §§ 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); § 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); § 842.106 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508 and 5 U.S.C. 8402(c)(1); §§ 842.604 and 842.611 also issued under 5 U.S.C. 8417; § 842.607 also issued under 5 U.S.C. 8416 and 8417; § 842.614 also issued under 5 U.S.C. 8419; § 842.615 also issued under 5 U.S.C. 8418; § 842.703 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; § 842.707 also issued under section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203; § 842.708 also issued under section 4005 of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239 and section 7001 of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508; subpart H also issued under 5 U.S.C. 1104.

14. Section 842.602 is amended by adding in alphabetical order a definition of the term "present value factor" to read as follows:

§ 842.602 Definitions.

* * * * *

Present value factor means the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging six distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

* * * * *

15. In § 842.615, paragraph (d) is added and the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 842.615 Deposits required.

* * * * *

(b) *Actuarial reduction in annuity of retirees who make post-retirement elections to provide a current spouse annuity or a former spouse annuity.* (1) The annuity reduction required by paragraph (b)(2) of this section applies to all retirees who are required to pay deposits under § 842.611 or § 842.612 and have not paid any portion of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (b)(1) of this section must have a permanent annuity reduction computed under paragraph (b)(4) of this section.

(3) A reduction under paragraph (b)(2) of this section commences on the same date as the annuity reduction under § 842.611 or § 842.612.

(4) The annuity reduction under paragraph (b)(2) of this section is equal to the lesser of—

(i) The amount of the deposit under § 842.611 or § 842.612 divided by the present value factor for the retiree's age on the commencing date of the reduction under paragraph (b)(3) of this section (plus any previous reduction(s) in the retiree's annuity required under paragraph (b)(2) or (c)(2) of this section); or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on the commencing date of the reduction (under paragraph (b)(3) of this section).

(5) (i) The reduction under paragraph (b)(2) or paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(c) *Post-retirement survivor election deposits that were partially paid before October 1, 1993.* (1) The annuity reduction required by paragraph (c)(2) of this section applies to all retirees who are required to pay deposits under § 842.611 or § 842.612 and have paid any portion (but not all) of the deposit prior to October 1, 1993, or from annuity accruing before that date.

(2) Retirees described in paragraph (c)(1) of this section must have a permanent annuity reduction computed under paragraph (c)(4) of this section.

(3) A reduction under paragraph (c)(2) of this section commences on October 1, 1993.

(4) The annuity reduction under paragraph (c)(2) of this section is equal to the lesser of—

(i) The amount of the principal balance remaining to be paid on October 1, 1993, divided by the present value factor for the retiree's age on October 1, 1993; or

(ii) Twenty-five percent of the rate of the retiree's self-only annuity on October 1, 1993.

(5) (i) The reduction under paragraph (c)(2) of this section terminates on the date that the retiree dies.

(ii) If payment of a retiree's annuity is suspended or terminated and later reinstated, or if a new annuity becomes payable, OPM will increase the amount of the original reduction computed under paragraph (b)(4) or paragraph (c)(4) of this section by any cost-of-living adjustments under section 8462 of title 5, United States Code, occurring between the commencing date of the original reduction and the commencing date of the reinstated or new annuity (but the adjusted reduction may not exceed 25 percent of the rate of the reinstated or new self-only annuity).

(d) For retirees who die before October 1, 1993, any unpaid portion of the deposit required under § 842.611 or § 842.612 will be collected from the survivor annuity (for which the election required the deposit) before OPM pays any survivor annuity.

[FR Doc. 93–25058 Filed 10–12–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Parts 201 and 203

RIN 0590–AA07

Regulations and Policy Statements Under the Packers and Stockyards Act: Trade Practices, Scale Test Instructions, Advertising Allowance Guidelines

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: Proposed amendments to rules issued under the Packers and Stockyards (P&S) Act (7 U.S.C. 181 *et seq.*) were published in the **Federal Register** (57 FR 45005) on September 30, 1992. This document adopts proposed changes which amend one regulation by lessening restrictions on market agencies selling on commission and amends a statement of general policy to provide greater clarity concerning guidelines for advertising allowances and other promotional programs offered by meat packers. Proposed changes which remove 6 regulations are also being adopted. Four of these regulations provide outdated procedures for testing scales subject to the P&S Act and the other concern selling agencies providing price guarantees and their ability to employ certain individuals. Seven other regulations and a statement of general policy will be retained in their present form as set forth in the proposal at 57 FR 45006.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, (202) 720–6951, or Kenneth Stricklin, Director, Packer and Poultry Division, (202) 720–7363.

SUPPLEMENTARY INFORMATION: In response to the proposal published in the **Federal Register** (57 FR 45005), the Agency received a total of 13 comments. Comments were received from five livestock producer trade associations, five individuals and groups representing livestock marketing interest, one meat trade association, and the other two were from poultry grower and processor trade associations.

Nine comments were received concerning removal of § 201.64 concerning price guarantees by market agencies selling livestock on a commission basis. Four comments from livestock producer trade associations, including two national associations, and two from associations representing cooperative livestock markets support removal of this regulation. While three of these comments provide general support for all the proposals, one comment from a national association representing livestock producers and the two comments from cooperative marketing interests specifically assert removal of this regulation will help selling agencies compete more effectively and benefit livestock producers. Three comments from marketing interests object to removal of § 201.64 because they believe its removal could, in the long term, weaken market agencies selling on commission and actually lead to less competition.

Removal of § 201.64 of the regulations will permit selling agencies to compete more effectively with other types of marketing businesses which are not affected by this regulation. If price guarantees, which have been prohibited by this regulation, are offered in a manner that is unjustly discriminatory, restrict competition, or have the effect of creating an unfair competitive environment, the Agency has authority to address specific problems on a case-by-case basis under the provisions of the P&S Act. Further, structural changes in the livestock marketing industry have altered the importance of § 201.64 since market agencies selling on commission are only one of several marketing alternatives available to most livestock sellers today. Other Alternatives include packer and dealer buying stations and direct purchases by packers, dealers, and producers.

Six comments were received concerning the proposed removal of § 201.66 and all generally supported removal. This regulation was intended to prohibit less than arm's length transactions between a packer and selling agency, thereby avoiding any conflict of interest. While this regulation eliminates a potential conflict of interest, it also restricts potential buying power. Since dealers and order buyers are permitted to be employed by a selling agency, except in key positions, we can see no viable reason to continue to exclude packer employees from employment by a selling agency under similar circumstances. Concerns regarding potential conflicts of interest are addressed under § 201.56 by restricting employment in specific key positions. Further, provisions of the P&S Act which prohibit unfair and deceptive practices would make any unfair advantage gained from such employment unlawful.

Sections 201.72–1. 201.78–1, 201.106–1, and 201.106–2, which provided detailed instructions for testing scales subject to the P&S Act, will be removed as proposed. These regulations are outdated and, in some instances, in conflict with current testing requirements as set forth in the National Bureau of Standards (now National Institute of Standards and Technology) Handbook 44, "Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices" which has been incorporated in § 201.71. All six of the comments which address these regulations supported their removal.

As proposed, § 201.56 will be amended to permit selling agencies, their owners, officers, agents, and employees (except specified key employees) to purchase livestock out of consignment for any purpose provided the livestock is first offered for sale in an open, competitive manner to other available buyers. This proposal limits the definition of key employees to the auctioneer, weighmaster, and private treaty or commission salesman. Such key employees will be prohibited from purchasing livestock out of consignment for any purpose for their own account. This change will permit selling agencies to market livestock in a manner that best represents the interest of the livestock seller and provide greater flexibility for market mechanisms to work.

Nine comments were received which addressed the proposed amendments to § 201.56. All support the proposed changes. One comment from a national association representing livestock markets suggests the term "Salesman" be clarified to state clearly it applies to

persons who actually take bids at a particular sale, rather than a fieldman. The language being adopted herein is limited to a prohibition against purchases from consignment by salesmen and other specified key employees, and the Agency affirms there is no intent to include fieldmen who are not engaged in accepting bids on consigned livestock.

The Agency received four comments on its proposed changes to policy statement 203.14. Three of the comments generally supported the recommended changes and one opposed them. The opposing comment expresses concern that the proposed changes will have a substantial economic effect on the small entities. The concern is that larger processors will be given increased license to use advertising and other allowances to freeze out competition from small producers who do not have the financial resources to compete on an even playing field with large national marketers. Further, the comment states, in effect, that unless the guidelines are absolutely compulsory in their application and compliance, it is likely that they may stifle competition.

This policy statement was issued to provide guidelines to the meat packing industry in complying with the provisions of the P&S Act when furnishing advertising and allowances to competing customers. The guidelines were not written to cover every promotional activity offered by every packer and are advisory in nature and do not have the full force and effect of law (thus the use of "should" rather than "must"). The intent of the guidelines is to assure that small processors are not put at a competitive disadvantage by discriminatory promotional activity of larger processors. Any advertising or allowance activity which is not in conformity with the guidelines and violates the P&S Act will be investigated by the Agency in a timely manner and appropriate action taken.

After considering the comments, the Agency has determined that several of the examples used in the guidelines should be eliminated, as proposed, to provide clarity and user friendliness. By doing so the Agency will be consistent with the Federal Trade Commission which amended its guidelines in August 1990 by eliminating several examples of how to implement promotional programs.

As proposed, each of the following regulations and statements of general policy will be retained in their present form:

201.11 Suspended registrants, officers, agents, and employees.
201.42 Custodial accounts for trust funds.
201.43 Payment and accounting for livestock and live poultry.
201.67 Packers not to own or finance selling agencies.
201.72 Scales; testing of.
201.97 Annual reports.
201.99 Purchase of livestock by packers on a carcass grade, carcass weight, or grade and weight basis.
203.10 Statement with respect to insolvency, definition of current assets and current liabilities.

In the process of reviewing these regulations, it was determined that they were necessary to the efficient and effective enforcement of the P&S Act and to the orderly conduct of the marketing system. The absence of any of the regulations would be detrimental to the industry and could result in increased litigation.

The comments received generally support retaining each of these regulations. However, some individual comments offered suggestions on specific sections. Three comments suggested § 201.11 be amended to deny registration to any applicant for registration with a prior conviction for fraud, theft, or embezzlement and another wanted to limit suspensions to specific circumstances. Since this regulation applies to registrants that have already been suspended, these suggestions need to be considered under § 201.10 which is still being reviewed. Two comments recommended a statutory dealer trust be incorporated into § 201.42 which requires selling agencies to maintain custodial accounts. A statutory dealer trust would require legislation amending the P&S Act. Another comment suggests this regulation be amended to permit items added to the buyer's invoice to be paid directly from the custodial account. The Agency believes this regulation already provides sufficient latitude to permit incidental charges that are directly related to a transaction to be paid from the custodial account when the charge is included in the buyer's payment and deposited directly into the custodial account.

One comment proposed amendments to § 201.43 to prohibit coercion or intimidation to dictate the terms or manner of payment on a poultry growing arrangement and to add recordkeeping requirements for live poultry dealers. Sections 401 and 410 of the P&S Act (7 U.S.C. 221 and 228b–1) provide recordkeeping and payment requirements for live poultry dealers. The Agency believes these provisions are adequate to address the concerns expressed in this comment.

Two comments recommended § 201.67 be amended to prohibit packers from owning or financing a selling agency only in those instances where it leads to anticompetitive behavior. Since this is an advisory regulation, the practical effect of the regulation is consistent with this recommendation. One comment recommended § 201.72 be amended to include scale testing requirements for scales used to weigh poultry feed distributed under a poultry growing arrangement. No changes are being adopted in § 201.72 at this time. This recommendation would require further study and consideration in light of current legislative authority before any changes could be proposed. One comment opposes retaining the annual report requirements of § 201.97 for live poultry dealers. The financial information furnished in these reports is crucial in administering the poultry payment and trust provisions of the P&S Act. It provides the necessary data for evaluation of the financial stability of each firm and, consequently, the ability of each to make prompt payment for live poultry.

One comment recommended § 201.99 be amended to establish uniform purchasing requirements for all packers purchasing livestock on a carcass basis. The Agency is responsible for ensuring that a packer's purchasing procedures do not result in any unfair, deceptive, or discriminatory practices; however, this does not include establishing uniform purchasing or marketing programs for the industry.

Two comments suggest the principal test for solvency set forth in § 203.10 should be whether a person can pay his/her obligations as they come due, not whether he/she has enough current assets to meet all obligations during the next 12 months. These comments do not accurately describe the principal test for insolvency defined in § 203.10 which is that current assets be at least equal to current liabilities. Obligations which may come due within 1 year, but have not yet been incurred, such as utilities, wages, etc., are not considered current liabilities. The issue to be addressed is whether an entity has the ability to meet its day-to-day obligations. In our experience, the current asset/liability ration is the best measure of that ability.

The changes in §§ 201.56 and 203.14 do not impose or change any recordkeeping or information collection requirements. Existing requirements in these regulations have been previously approved by OMB under Control No. 0590–0001.

As approved by the Regulatory Flexibility Act, it is hereby certified that these rules will not have a significant economic impact on a substantial number of small entities and a statement explaining the reasons for the certification is set forth in the following paragraph and is being provided to the Chief Counsel for Advocacy of the Small Business Administration.

While these amended rules impact small entities, they will not have a significant economic impact on any entity, large or small. The primary effect of these rules is to remove restrictions which will provide greater flexibility for market mechanisms to work and provide clarity and consistency with other regulations and guidelines. Although the primary effect is to remove restrictions, the changes further restrict purchases by auctioneers, salesmen, and weighmasters to eliminate conflicts of interest in fulfilling their fiduciary responsibilities in consignment transactions.

These amendments to rules are not major rules for the purposes of E.O. 12291. The amendments do not impose any new paperwork requirements; do not have implications of Federalism under the Criteria of E.O. 12612; and do not impact on family formation under the Criteria of E.O. 12606.

These amendments to rules have been reviewed under E.O. 12778, Civil Justice Reform, and are not intended to have retroactive effect. The six amendments will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with these amendments. Prior to judicial challenge of the amendments to rules, a party must be first found by the Secretary to be in violation of the P&S Act and in violation of the regulations. Second, the party must appeal that finding and the validity of the regulation to the Secretary in the course of the administrative proceeding. Only after taking these steps, the party may challenge the regulation in a court of competent jurisdiction.

List of Subjects in 9 CFR Parts 201 and 203

Advertising allowances, Market agency employees, Price guarantees, Purchases from consignment, Scale test instructions.

Done at Washington, DC, this 6th day of October 1993.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

For reasons set forth in the preamble, the Packers and Stockyards Administration will amend 9 CFR parts 201 and 203 as follows:

1. The authority citation for parts 201 and 203 continues to read as follows:

Authority: 7 U.S.C. 204, 228; 7 CFR 2.17(e), 256.

PART 201—[AMENDED]

2. Remove § 201.64.

3. Remove § 201.66.

4. Remove § 201.72–1.

5. Remove § 201.78–1.

6. Remove § 201.106–1.

7. Remove § 201.106–2

8. Section 201.56 is amended by revising paragraphs (b), (c), and (d), and by removing paragraph (e).

§ 201.56 Market agencies selling on commission, purchases from consignment.

* * * * *

(b) *Purchases from consignment.* No market agency engaged in the business of selling livestock on a commission basis shall purchase livestock from consignments, and no such market agency shall permit its owners, officers, agents, employees or any firm in which such market agency or its owners, officers, agents, or employees have an ownership or financial interest to purchase livestock consigned to such market agency, without first offering the livestock for sale in an open and competitive manner to other available buyers, and then only at a price higher than the highest available bid on such livestock.

(c) *Key employees not to purchase livestock out of consignments.* No market agency engaged in selling livestock on commission shall permit its auctioneers, weighmasters, or salesmen to purchase livestock out of consignment for any purpose for their own account, either directly or indirectly.

(d) *Purchase from consignments; disclosure required.* When a market agency purchases consigned livestock or sells consigned livestock to any owner, officer, agent, employee, or any business in which such market agency, owner, officer, agent, or employee has an ownership or financial interest, the market agency shall disclose on the account of sale the name of the buyer and the nature of the relationship existing between the market agency and the buyer.

(Approved by the Office of Management and Budget under control number 0590–0001.)

9. Section 203.14 is revised to read as follows:

§ 203.14 Statement with respect to advertising allowances and other merchandising payments and services.

The Guidelines

1. *Who is a customer?* (a) A *customer* is a person who buys for resale directly from the packer, or through the packer's agent or broker; and in addition, a customer is any buyer of the packer's product for resale who purchases from or through a wholesaler or other intermediate reseller.

(**Note:** In determining whether a packer has fulfilled its obligations toward its customers, the Packers and Stockyards Administration will recognize that there may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer who purchases solely from other retailers or one who makes only sporadic purchases, or one who does not regularly sell the packer's product or who is a type of retail outlet not usually selling such products will not be considered a "customer" of the packer unless the packer has been put on notice that such retailer is selling its product.)

(b) *Competing customers* are all businesses that compete in the resale of the packer's products of like grade and quality at the same functional level of distribution, regardless of whether they purchase direct from the packer or through some intermediary.

Example: A packer sells directly to some independent retailers, sells to the headquarters of chains and of retailer-owned cooperatives, and also sells to wholesalers. The direct-buying independent retailers, the headquarters of chains and of retailer-owned cooperatives, and the wholesalers' independent retailer customers are customers of the packer. Individual retail outlets which are part of the chains or members of the retailer-owned cooperatives are not customers of the packer.

2. *Definition of services. Services* are any kind of advertising or promotion of a packer's product, including but not limited to, cooperative advertising, handbills, window and floor displays, demonstrators and demonstrations, customer coupons, and point of purchase activity.

3. *Need for a plan.* If a packer makes payments or furnishes services, it should do so under a plan that meets several requirements. If there are many competing customers to be considered, or if the plan is at all complex, the packer would be well advised to put its plan in writing. The requirements are:

(a) Proportionally equal terms—The payments or services under the plan should be made available to all competing customers on proportionally equal terms. This means that payments or services should be made proportionately on some basis that is fair to all customers who compete in the resale of the packer's products. No single way to achieve the proper proportion is prescribed, and any method that treats completing customers on proportionally equal terms may be used. Generally, this can best be done by basing the payments made or the services

furnished on the dollar volume or on the quantity of goods purchased during a specified period. Other methods which are fair to all competing customers are also acceptable.

Example 1: A packer may properly offer to pay a specified part (say 50 percent) of the cost of local advertising up to an amount equal to a set percentage (such as 5 percent) of the dollar volume of such purchases during a specified time.

Example 2: A packer may properly place in reserve for each customer a specified amount of money of each unit purchased and use it to reimburse those customers for the cost of advertising and promoting the packer's product during a specified time.

Example 3: A packer's plan should not provide an allowance on a basis that has rates graduated with the amount of goods purchased, as for instance, 1 percent of the first $1,000 purchases per month, 2 percent on second $1,000 per month, and 3 percent on all over that.

(b) Packer's duty to inform—The packer should take reasonable action, in good faith, to inform all its competing customers of the availability of its promotional program. Such notification should include all the relevant details of the offer in time to enable customers to make an informed judgment whether to participate. Where such one-step notification is impracticable, the packer may, in lieu thereof, maintain a continuing program of first notifying all competing customers of the types of promotions offered by the packer and a specific source for the customer to contact in order to receive full and timely notice of all relevant details of the packer's promotions. Such notice should also inform all competing customers that the packer offers advertising allowances and/or other promotional assistance that are usable in a practical business sense by all retailers regardless of size. When a customer indicates its desire to be put on the notification list, the packer should keep that customer advised of all promotions available in its area as long as the customer so desires. The packer may make the required notification by any means it chooses; but in order to show later that it gave notice to a certain customer, it is in a better position to do so if it was given in writing or a record was prepared at the time of notification showing date, person notified, and contents of notification.

If more direct methods of notification are impracticable, a packer may employ one or more of the following methods, the sufficiency of which will depend upon the complexity of its own distribution system. Different packers may find that different notification methods are most effective for them:

(1) The packer may enter into contracts with its wholesaler, distributors or other third parties which conform to the requirements of item 5, infra.

(2) The packer may place appropriate announcements on product containers or inside thereof with conspicuous notice of such enclosure on the outside.

(3) The packer may publish notice of the availability and essential features of a promotional plan in a publication of general distribution in the trade.

Example 1: A packer has a wholesaler-oriented plan directed to wholesalers distributing its products to retailing customers. It should notify all the competing wholesalers distributing its products of the availability of this plan, but the packer is not required to notify retailing customers.

Example 2: A packer who sells on a direct basis to some retailers in an area, and to other retailers in the area through wholesalers, has a plan for the promotion of its products at the retail level. If the packer directly notifies not only all competing direct purchasing retailers but also all competing retailers purchasing through the wholesalers as to the availability, terms and conditions of the plan, the packer is not required to notify its wholesalers.

Example 3: A packer regularly engages in promotional programs and the competing customers include large direct purchasing retailers and smaller customers who purchase through wholesalers. The packer may encourage, but not coerce, the retailer purchasing through a wholesaler to designate a wholesaler as its agent for receiving notice of, collecting, and using promotional allowances for the customer. If a wholesaler or other intermediary by written agreement with a retailer is actually authorized to collect promotional payments from suppliers, the packer may assume that notice of and payment under a promotional plan to such wholesaler or intermediary constitutes notice and payment to the retailer.

(A packer should not rely on a written agreement authorizing an intermediary to receive notice of and/or payment under a promotional plan for a retailer if the packer knows, or should know, that the retailer was coerced into signing the agreement. In addition, a packer should assume that an intermediary is not authorized to receive notice of and/or payment under a promotional plan for a retailer unless there is a written authorization signed by such retailer.)

(c) Availability to all competing customers—The plan should be such that all types of competing customers may participate. It should not be tailored to favor or discriminate against a particular customer or class of customers but should, in its terms, be usable in a practical business sense by all competing customers. This may require offering all such customers more than one way to participate in the plan or offering alternative terms and conditions to customers for whom the basic plan is not usable and suitable. The packer should not, either expressly or by the way the plan operates, eliminate some competing customers, although it may offer alternative plans designed for different customer classes. If it offers alternative plans, all of the plans offered should provide the same proportionate equality and the packer should inform competing customers of the various alternative plans.

When a packer, in good faith, offers a basic plan, including alternatives, which is reasonably fair and nondiscriminatory and refrains from taking any steps which would prevent any customer, or class of customers, from participating in its program, it shall be deemed to have satisfied its obligation to make its plan functionally available to all customers, and the failure of any customer or customers to participate in the program shall not be deemed to place the packer in violation of the provisions of the Packers and Stockyards Act.

Example 1: A packer offers a plan of short term store displays of varying sizes, including some which are suitable for each of its competing customers and at the same time are small enough so that each customer may make use of the promotion in a practical business sense. The plan also calls for uniform, reasonable certification of performance by the retailer. Because they are reluctant to process a reasonable amount of paperwork, some small retailers do not participate. This fact is not deemed to place a packer in violation of Item 3(c) and it is under no obligation to provide additional alternatives.

Example 2: A packer offers a plan for cooperative advertising on radio, television, or in newspapers of general circulation.[1] Because the purchases of some of its customers are too small, this offer is not "functionally available" to them. The packer should offer them alternative(s) on proportionally equal terms that are usable by them and suitable for their business.

(d) Need to understand terms—In informing customers of the details of a plan, the packer should provide them sufficient information to give a clear understanding of the exact terms of the offer, including all alternatives, and the conditions upon which payment will be made or services furnished.

(e) Checking customer's use of payments—The packer should take reasonable precautions to see that services it is paying for are furnished and also that it is not overpaying for them. Moreover, the customer should expend the allowance solely for the purpose for which it was given. If the packer knows or should know that what it pays or furnishes is not being properly used by some customers, the improper payments or services should be discontinued.[2]

A packer who, in good faith, takes reasonable and prudent measures to verify the performance of its competing customers will be deemed to have satisfied its obligations under the Act. Also, a packer who, in good faith, concludes a promotional agreement with wholesalers or other intermediaries and who otherwise conforms to the standards of Item 5 shall be deemed to have satisfied this obligation. If a packer has taken such steps, the fact that a particular customer has retained an allowance in excess of the cost, or approximate cost if the actual cost is not known, of services performed by the customer shall not alone be deemed to place a packer in violation of the Act.

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[1] In order to avoid the tailoring of promotional programs that discriminate against particular customers or class of customers, the packer in offering to pay allowances for newspaper advertising should offer to pay the same percentage of the cost of newspaper advertising for all competing customers in a newspaper of the customer's choice, or at least in those newspapers that meet the requirements for second class mail privileges.

[2] The granting of allowances or payments that have little or no relationship to cost or approximate cost of the service provided by the retailer may be considered a violation of section 202 of the Act.

(When customers may have different but closely related costs in furnishing services that are difficult to determine such as the cost for distributing coupons from a bulletin board or using a window banner, the packer may furnish to each customer the same payment if it has a reasonable relationship to the cost of providing the service or is not grossly in excess thereof.)

4. *Competing customers.* The packer is required to provide in its plan only for those customers who compete with each other in the resale of the packer's products of like grade and quality. Therefore a packer should make available to all competing wholesalers any plan providing promotional payments or services to wholesalers, and similarly should make available to all competing retailers any plan providing promotional payments or services to retailers. With these requirements met, a packer can limit the area of its promotion. However, this section is not intended to deal with the question of a packer's liability for use of an area promotion where the effect may be to injure the packer's competition.

5. *Wholesaler or third party performance of packer's obligations.* A packer may, in good faith, enter into written agreements with intermediaries, such as wholesalers, distributors or other third parties, including promoters of tripartite promotional plans, which provide that such intermediaries will perform all or part of the packer's obligations under this part. However, the interposition of intermediaries between the packer and its customers does not relieve the packer of its ultimate responsibility of compliance with the provisions of the Packers and Stockyards Act. The packer, in order to demonstrate its good faith effort to discharge its obligations under this part, should include in any such agreement provisions that the intermediary will:

(1) Give notice to the packer's customers in conformity with the standards set forth in items 3(b) and (d), supra;

(2) Check customer performance in conformity with the standards set forth in item 3(e), supra;

(3) Implement the plan in a manner which will insure its functional availability to the packer's customers in conformity with the standards set forth in item 3(c), supra (This must be done whether the plan is one devised by the packer itself or by the intermediary for use by the packer's customers.); and

(4) Provide certification in writing and at reasonable intervals that the packer's customers have been and are being treated in conformity with the agreement.

A packer who negotiates such agreements with its wholesalers, distributors or third party promoters will be considered by the Administration to have justified its "good faith" obligations under this section only if it accompanies such agreements with the following supplementary measures: At regular intervals the packer takes affirmative steps to verify that its customers are receiving the proportionally equal treatment to which they are entitled by making spot checks designed to reach a representative cross section of its customers. Whenever such spot checks indicate that the agreements are not being implemented in such a way that its customers are receiving such proportionally equal treatment, the packer takes immediate steps to expand or to supplement such agreements in a manner reasonably designed to eliminate the repetition or continuation of any such discriminations in the future.

Intermediaries, subject to the Packers and Stockyards Act, administering promotional assistance programs on behalf of a packer may be in violation of the provisions of the Packers and Stockyards Act, if they have agreed to perform the packer's obligations under the Act with respect to a program which they have represented to be usable and suitable for all the packer's competing customers if it should later develop that the program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

6. *Customer's liability.* A customer, subject to the Packers and Stockyards Act, who knows, or should know, that it is receiving payments or services which are not available on proportionally equal terms to its competitors engaged in the resale of the same packer's products may be in violation of the provisions of the Act. Also, customers (subject to the Packers and Stockyards Act) that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under the provisions of the Act.

Example: A customer subject to the Act should not induce or receive an allowance in excess of that offered in the packer's advertising plan by billing the packer at "vendor rates" or for any other amount in excess of that authorized in the packer's promotion program.

7. *Meeting competition.* A packer charged with discrimination under the provisions of the Packers and Stockyards Act may defend its actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing packer to the particular customer, or to meet equivalent services furnished by a competing packer to the particular customer. This defense, however, is subject to important limitations. For instance, it is insufficient to defend solely on the basis that competition in a particular market is very keen, requiring that special allowances be given to some customers if a packer is "to be competitive."

8. *Cost justification.* It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a packer to show that such payment or service could be justified through savings in the cost of manufacture, sale, or delivery.

(Approved by the Office of Management and Budget under control number 0590–0001)

[FR Doc. 93–25007 Filed 10–12–93; 8:45 am]

BILLING CODE 3410–KD–P–M

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 613, 614, 620, 621, and 627

RIN 3052–AB32

Organization; Eligibility and Scope of Financing; Loan Policies and Operations; Disclosure to Shareholders; Accounting and Reporting Requirements; Title V Conservators and Receivers; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (58 FR 48780, September 20, 1993) that amended the regulations updating the existing accounting and reporting requirements, promoting consistency with industry practices pertaining to problem loan accounting and reporting issues, and ensuring that the regulatory requirements and standards remain consistent with those of generally accepted accounting principles. This document corrects a typographical error in the final rule.

EFFECTIVE DATE: The regulations shall become effective on December 31, 1993 or upon the expiration of 30 days after publication, during which either or both Houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register**, a typographical error was inadvertently made in the second sentence of § 621.20(b)(3). Accordingly, FR Doc. 93–22525, published September 20, 1993, is amended as follows:

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§ 621.20 [Corrected]

1. On page 48790, first column, twentieth line from the bottom, paragraph (b)(3) of § 621.20 is corrected by removing the reference "§ 621.11" and adding in its place, the reference "§ 621.12".

Dated: October 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–24991 Filed 10–12–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–231–AD; Amendment 39–8675; AD 83–07–09 R1]

Airworthiness Directives; Canadair Model CL–600–1A11 and CL–600–2A12 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Model CL–600 series airplanes, that currently requires an inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. That action was prompted by reports of wire overheating under heavy electrical load conditions. This amendment limits the applicability of the rule. The actions specified by this AD are intended to prevent potential wire overheating, which could result in a cabin fire.

EFFECTIVE DATE: November 12, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 83–07–09, Amendment 39–4609 (48 FR 14353, April 4, 1983), which is applicable to all Canadair Model CL–600 series airplanes, was published in the **Federal Register** on March 3, 1993 (58 FR 12192). The action proposed to supersede an existing AD to limit the applicability only to Model CL–600–1A11 and CL–600–2A12 series airplanes. The existing AD currently requires a one-time inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), and correction or replacement of discrepant parts. The models that would be excluded from the applicability of the rule are later models, which are equipped with improved generator and APU feeder wires.

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

One commenter supports the proposed rule.

Another commenter requests that this AD action be issued as a "revision" rather than a "supersedure" of the existing AD. The commenter believes that the proposed change is non-substantive in nature, since certain airplanes equipped with improved wiring would be removed from the applicability statement. The FAA concurs. This AD action is relieving in nature; that is, fewer airplanes are affected by the requirements. To supersede the existing AD and replace it with a new one having a new AD number, would serve no purpose in terms of the ability of affected operators to track compliance with the AD and maintain accurate records of compliance. Because this AD requires only a one-time action and was originally effective over 10 years ago, the FAA finds that the consequent workload burden that would be associated with revising maintenance record entries (to record a new AD number) among all of the affected operators would not be appropriate. The FAA considers that a less burdensome approach is to revise the existing AD, rather than to supersede it. In accordance with this approach, the final rule for this action (1) retains the same AD number, but an "R1" has been added to it; and (2) is assigned a new amendment number. (This change does not affect the operators' obligation to maintain records indicating current AD status.)

Affected operators should note that this revised AD has been reformatted to be in compliance with the **Federal Register** style. In addition, the compliance time for corrective action has been clarified to indicate that it is required "prior to further flight;" and Canadair Drawing 600–58001, Note 17, has been included in the AD as an additional source of service information. All of these items appeared in the notice preceding this final rule.

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

Since this action amends the applicability of an existing AD to exclude certain models of airplanes, no additional operators will be affected by the requirements of this rule, nor will additional costs be incurred.

The current requirements of this AD now affect approximately 90 airplanes of U.S. registry. The costs associated with accomplishing the requirements of the AD are: 5 work hours per airplane to perform the required one-time inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the current revised AD on U.S. operators is estimated to be $24,750, or $275 per airplane. (This total cost figure assumes that no operator has yet accomplished the requirements of this AD. However, based on the fact that the original AD was issued some 10 years ago, in all likelihood, the majority of affected operators have complied previously with the rule.)

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 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 39–4609 (48 FR 14353, April 4, 1983), and by adding a new airworthiness directive (AD), amendment 39–8675, to read as follows:

83–07–09 R1 Canadair: Amendment 39–8675. Docket 92–NM–231–AD. Revises AD 83–07–09, Amendment 39–4609.

Applicability: All Model CL–600–1A11 and CL–600–2A12 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD requires the same actions as required by AD 83–07–09. amendment 39–4609, but is applicable to fewer airplanes. Operators affected by this AD who have accomplished these actions previously in accordance with AD 83–07–09 are considered to be in compliance with this revised AD.

To prevent possible wire overheating, which could result in a cabin fire, accomplish the following:

(a) Within 300 hours time-in-service or within 3 calendar months after April 13, 1983 (the effective date of AD 83–07–09, Amendment 39–4609), whichever occurs earlier, perform an inspection to verify proper installation of the 8 gage feeder wires from generators 1 and 2 and the auxiliary power unit (APU), in accordance with Canadair Drawings 600–58001, Note 17, or 600–58031, Note 14; and CL–600 Completion Centre Handbook Section 6. Prior to further flight, correct any discrepant wires in accordance with the drawings or handbook.

(b) Replacement of the 8 gage generator 1, generator 2, and APU feeder wires with 4 gage feeder wires of the same type constitutes an approved alternative method of compliance for the requirements of this AD.

(c) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) 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.

(e) This amendment becomes effective on November 12, 1993.

Issued in Renton, Washington, on August 23, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25036 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 93–ASW–1]

Establishment of Restricted Area R–3807; Glencoe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Restricted Area R–3807 located in the vicinity of Glencoe, LA. The restricted area is necessary to provide for the safety of aircraft operations in the vicinity of a tethered aerostat airborne radar system operated by the U.S. Customs Service. The aerostat balloon will be operated as high as 15,000 feet mean sea level (MSL) to provide radar surveillance of aircraft suspected of transporting illegal drugs into the United States.

EFFECTIVE DATE: 0901 UTC, October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace—Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On June 16, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish Restricted Area R–3807, Glencoe, LA, (58 FR 33223).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Six comments were received in response to the Notice of Proposed Rulemaking (NPRM) published on June 16, 1993. Five comments were received from interested parties that represented helicopter companies or helicopter organizations. One comment was received from the Louisiana Department of Transportation, Aviation Safety Program. The comments are as follows:

1. Air Logistics Inc., objected to the proposal and stated that numerous fixed-wing aircraft and more than 400 helicopters operate within that area, frequently during periods of reduced visibility. They also stated that the aerostat tether will neither be marked nor lighted, which will increase the hazard to general aviation, thereby placing passengers and crew members in jeopardy.

2. The Helicopter Safety Advisory conference stated that its members operate about 630 helicopters in the Gulf of Mexico while transporting a daily average of about 10,900 passengers in the vicinity of the proposed Glencoe restricted area. They believe that the combination of an unmarked and unlighted tethered balloon at 15,000 feet and within a high intensity air traffic area will present a serious safety hazard and warrants further regulatory evaluation.

3. Industrial Helicopters, Inc., stated that there is high density traffic in the area around Restricted Area R–3807 and that restricted airspace would not prevent an inadvertent encounter with the aerostat during marginal weather conditions.

4. The State of Louisiana, Department of Transportation, Aviation Safety Program, is concerned about the concentration of aviation traffic in the area around R–3807 and the aerostat balloon's effect on night visual flight rules (VFR) operations in proximity of the Le Matire Memorial Airport.

5. Petroleum Helicopters, Inc., is of the opinion that the lack of marking and lighting of the tether poses an unnecessary risk to air operations. Until a suitable means of marking and lighting is developed, the aerostat deployment should remain on hold.

6. The Helicopter Association International, commented that the establishment of Restricted Area R–3807 will not prevent air traffic from inadvertently encountering the aerostat in reduced visibility conditions. An obstruction the size of the aerostat and the tether should be marked and lighted up to at least 5,000 feet MSL.

The Environmental Assessment that was submitted by the U.S. Customs

Service referencing the Glencoe site, stated among other items, that there would be no impact on any airport in the area.

The FAA's study indicates that there would be no significant impact on instrument flight rules (IFR) and VFR operations in the area of the aerostat.

The major concerns identified by commenters are that:

(1) The aerostat is positioned in an area where there is helicopter VFR traffic servicing the off-shore oil wells;

(2) The Restricted Area R–3807 will not appear on navigational charts until the U.S. Gulf Coast Charts are published on November 11, 1993, and

(3) The tether will not be marked or lighted.

The FAA has undertaken a special effort to inform pilots of the restricted area and the aerostat location. A notice with a graphic depicting the location of Restricted Area R–3807 has been mailed to all pilots in the United States. The graphic notice will be published continuously in the bi-weekly Notice to Airmen (NOTAM) publication until R–3807 appears on the Houston Sectional Chart effective date February 11, 1994. Prior to that date R–3807 will appear on the U.S. Gulf Coast Chart, effective November 11, 1993. In addition, a nationwide NOTAM describing the restricted area is currently in effect and available to pilots.

High intensity strobe lights are installed on the balloon and, as an additional safety feature, an array of high intensity strobe lights has been installed on the ground around the balloon's anchor point. The ground array will alert pilots of the tether location if they inadvertently stray into the restricted area. Also, local NOTAM's can be obtained from appropriate air traffic control facilities in the area. These actions address the concerns of the commenters and provide the necessary safeguards for operation of the aerostat. The coordinates for this airspace docket are based on North American Datum 83. Section 73.38 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The Rule

This amendment to part 73 of the Federal Aviation Regulations establishes Restricted Area R–3807, Glencoe, LA. The restricted area will provide airspace for the operation of a tethered aerostat-borne radar system. This system provides surveillance of airspace to detect low altitude aircraft attempting to penetrate the United States airspace. The restricted area encompasses a 3-nautical-mile radius centered at lat. 29°48'37"N., long. 91°39'47"W., from the surface up to and including 15,000 feet MSL. This system increases the probability of the interception and interdiction of suspect aircraft and provides low altitude radar coverage for the Customs Service. Restricted Area R–3807 is necessary to contain a U.S. Customs Service aerostat balloon. The circular restricted area establishes airspace that aircraft must avoid and therefore will not strike the unmarked and unlighted tether. The aerostat balloon has been operated within a temporary flight restriction area since August 30, 1993, because of urgent requirements to have the system tested and operational as soon as possible. In view of the safety measures previously described and the notification to all pilots of the current operation of the balloon, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and good cause, pursuant to 5 U.S.C. 553(d), exists for making this amendment effective in less than thirty days.

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

Environmental Review

An environmental assessment of the proposal performed by C.H. Fenstermaker & Associated, Inc., Environmental Consultants, for the U.S. Customs Service, which the FAA adopts, finds no significant environmental impact. Use of the subject area as proposed is consistent with existing national environmental policies and objectives as set forth in section 101(a) of NEPA and will not significantly affected the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.38 [Amended]

2. § 73.38 is amended as follows:

R–3807 Glencoe, LA [New]

Boundaries. A 3-nautical-mile radius centered at lat. 29°48'37"N., long. 91°39'47"W.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Houston ARTCC

Using agency. USAF, Southeast Air Defense Sector, Tyndall AFB, FL.

Issued in Washington, DC, on October 5, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–25050 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–12–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 240

[Release No. 33–7022; 34–33023; IC–19768; File No. S7–5–93] RIN 3235–AF85

Securities Transactions Settlement

AGENCY: Securities and Exchange Commission

ACTION: Final Rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of new Rule 15c6–1 under the Securities Exchange Act of 1934 ("1934 Act") which establishes three business days as the standard settlement timeframe for broker-dealer trades, effective June 1, 1995. Rule 15c6–1 is designed to reduce the risk to clearing corporations, their members, and public investors inherent in settling securities transactions by reducing the number of unsettled trades in the clearance and settlement system at any given time. The Rule also will facilitate additional risk reduction measures by achieving closer conformity between the government securities and derivative markets and the markets for other securities.

EFFECTIVE DATE: June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Branch Chief, or Sonia Burnett, Attorney, at 202/272–2775, Office of Securities Processing Regulation, Branch of International and Debt Clearing Agency Regulation, Division of Market Regulation ("Division"), 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On February 23, 1993, the Commission proposed for comment Rule 15c6–1 (17 CFR 240.15c6–1) under the 1934 Act.[1] That Rule provides that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptance, or commercial bill) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract.[2] As described above, the Rule would allow a broker or dealer to agree that settlement will take place in more than three business days. The agreement, however, must be express and reached at the time of the transaction. In the Proposing Release, the Commission invited commentators to address the merits of the proposed Rule; the costs and benefits of the proposed Rule; the scope of and securities affected by the proposed Rule; broker-dealer costs to develop and employ procedures to comply with the proposed Rule; and any risk reduction benefits and costs savings that may result from the proposed rule.

The Commission received comments from 1,914 commentators concerning the proposed Rule. Over 101 commentators favor the proposed Rule, 248 commentators oppose the proposed Rule, and 15 commentators offered comments on the proposed Rule but did not state if the commentator generally supports or opposes the proposal. In addition, 1,550 commentators submitted substantially similar letters generally in favor of increasing the safety and soundness of the U.S. clearance and settlement system but urging the Commission to ensure that investors can continue to obtain direct registration of their securities on issuer records in a tnree-day settlement environment. Fifty-six of the commentators that oppose the Rule expressed concern about the costs of complying with the three-day settlement. A complete list of commentators is attached as Appendix 1. Staff of the Commission has prepared a summary of the comments, a copy of which has been placed in the official file.

As discussed below, the Commission agrees with many of the commentators' suggestions, and the Commission has modified Rule 15c6–1 accordingly. For example, the Commission is modifying the Rule to exempt at this time transactions in limited partnership interests that are not listed on a national securities exchange or traded in the over-the-counter market ("unlisted limited partnership interests") and certain new issues involving firm-commitment underwritings. Although the Commission is not expanding the scope of the Rule to encompass municipal securities, the Commission is calling upon the Municipal Securities Rulemaking Board ("MSRB") to take all steps necessary to shorten the routine settlement cycle for municipal securities transactions by the effective date of Rule 15c6–1. In addition, the Commission has determined not to exempt other securities issued by mutual funds and private label mortgage-backed securities, or listed limited partnership interests. Finally, the Commission is modifying the Rule to authorize the Commission, by order, to exempt additional securities from the scope of Rule 15c6–1. For the reasons discussed in the Proposing Release and below, the Commission is adopting Rule 15c6–1, as revised, effective June 1, 1995.

I. Background

In recognition of the importance of broker-dealer settlement practices to the clearance and settlement process,[3] the Securities Acts Amendments of 1975 ("1975 Amendments")[4] authorized federal regulation of the time and method by which broker-dealers settle securities transactions. In adopting the 1975 Amendments, Congress directed the Commission to act in the national interest to achieve safety and efficiency in clearance and settlement. Section 17A of the 1934 Act directs the Commission "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities)."[5] That directive was revised by the Market Reform Act of 1990[6] to reflect the interdependence of options, futures, and equity markets that trade products involving securities or stock indexes.

Currently, the settlement cycle in the U.S. varies among markets.[7] Settlement of securities transactions on the fifth business day after the trade date ("T+5") is largely a function of market custom and industry practice. There is no federal rule that mandates a specific settlement cycle for securities transactions. Indeed, at one time, other settlement periods were considered "regular-way."[8] Prior to 1953, settlement at the American Stock Exchange ("Amex") occurred on the second day after the trade date ("T+2"), and gradually moved to the third day after the trade date ("T+3") in 1953, T+4 in 1962, and to the present T+5 in 1968.[9] The New York Stock Exchange ("NYSE") originally settled trades on T+1 in the 1920s, but settlement has gradually moved to T+5.[10] Currently, self-regulatory organization ("SRO") rules define "regular way" settlement as settlement on T+5.[11] At this time, however, and for the reasons set out

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[1] Securities and Exchange Commission Release Nos. 33–6976; 34–31904; IC–19282; (February 23, 1993), 58 FR 11806 (File No. S7–5–93) ("Proposing Release").

[2] As noted in the Proposing Release, because exchange-traded options and government securities routinely settle on the day after trade date, settlement of such securities transactions will be essentially unchanged.

[3] The term "clearance" includes the comparison of data regarding the terms of settlement of securities transactions and the allocation of securities settlement responsibilities. After trade comparison, most trades clear through a continuous net settlement system ("CNS") operated by a clearing corporation registered with the Commission under Section 17A of the 1934 Act. Under CNS, the clearing corporation nets each clearing member's purchases and sales to arrive at a daily net receive or deliver obligation for each security and a daily net settlement payment obligation. The term "settlement" includes the delivery of securities in exchange for funds, pursuant to the terms of the original transaction, and the custody of securities. See section 3(a)(23)(A) of the 1934 Act, 15 U.S.C. 78c(a)(23)(A).

[4] Public Law 94–29 section 16, 89 Stat. 146.

[5] See 15 U.S.C. § 78o, 78q-1, and 78w.

[6] Public Law 101–432, 104 Stat. 963.

[7] Settlement in the futures, options, and government securities markets occurs on the day after trade date ("T+1") using same-day funds. Settlement of most trades in corporate and municipal securities, on the other hand, takes place on the fifth business day after the trade date ("T+5") with money payments among financial intermediaries made in next-day funds (*i.e.*, payment by means of certified checks passing between the clearing corporation and its members). Thus, financial intermediaries have good funds on "T+6."

[8] See e.g., Remarks of Commissioner Mary L. Schapiro before the Securities Industry Association ("SIA") Regional Conference (March 20, 1991), stating that "[p]rior to 1968, equity transactions in the U.S. were settled on the fourth day after the trade date ("T+4"), without causing undue harm to retail customers."

[9] Letter from Mary Ann Callahan, Vice President/Director of International Development, National Securities Clearing Corporation ("NSCC"), to Toshitsugu Shimizu, Assistant Manager, Tokyo Stock Exchange (June 30, 1987).

[10] Frank W. Curran, Address to Executives and Officers of Korea Securities Industry (March 28, 1974).

[11] See e.g., National Association of Securities Dealers, Inc. Uniform Practice Code ¶ 3512, section 12 and New York Stock Exchange Rule 64.

below, the Commission believes T+3 settlement should be mandated.

II. Basis and Purpose of the Rule

A. Regulatory Basis

The market break of 1987 highlighted the need for improvements in the nation's clearance and settlement system.[12] The performance of the clearance and settlement system was viewed by many as a threat to the stability of the market during this time. During and after the week of October 19, 1987, over 50 introducing brokers failed, many as a result of the inability of customers to meet margin calls and pay settlement obligations.[13] The failure to meet margin calls and/or transaction settlement obligations exposed some clearing firms to financial loss, thus threatening the entire financial system.[14]

Shortly after the 1987 market break, then Treasury Secretary Nicholas F. Brady referred to the clearance and settlement system as the weakest link in the nation's financial system and noted that improving clearance and settlement would "help ensure that a securities market failure does not become a credit market failure."[15] Gerald Corrigan, President of the Federal Reserve Bank of New York ("FRBNY"), noted: "[T]he greatest threat to the stability of the financial system as a whole [during the 1987 market break] was the danger of a major default in one of these clearing and settlement systems."[16]

The connection between a crisis in the clearance and settlement system and the financial industry was highlighted by the bankruptcy in 1990 of Drexel Burnham Lambert Group, the holding company parent of Drexel Burnham Lambert, Inc. ("Drexel"), a large broker-dealer. As described more fully in the Commission's testimony before the Senate Banking Committee,[17] near gridlock developed in the mortgaged-backed securities market and in the corporate debt and equity markets where Drexel was an active participant. Drexel had significant positions in mortgage-backed securities that required physical delivery of certificates to settle and also in corporate equity and debt that could be liquidated by book-entry transfer. Lenders and counterparties, however, were reluctant to release both physical certificates and book-entry securities to Drexel. Those counterparties were concerned that the delivery of securities to Drexel against the promise of payment at the end of the day might result in the deliverer's inability to retrieve the securities if the deliverer did not receive payment because of an intervening event, such as the filing of a petition for bankruptcy by or against Drexel, or the assertion of a lien or set-off by one or more financial institutions handling those funds or securities.[18]

The events that surrounded the subsequent liquidation of Drexel's positions in mortgage-backed and corporate securities highlighted two concerns—first, the risk that counterparty credit concerns could lead to gridlock in securities markets, even where regulators assured markets that a major participant is solvent; second, that these risks are not limited to markets where transactions are subject to netting by clearing corporations. These events forced the conclusion that the clearance and settlement system deserved immediate attention.[19]

As noted by Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board"), "The importance of strong clearing and settlement systems cannot be overemphasized. This area was identified by the Brady Commission and others after the market break last year as a potential point of vulnerability in the U.S. financial system. The overloading of the * * * clearing systems last October induced breakdowns that dramatically increased uncertainty among investors and likely contributed to additional downward pressures on prices."[20]

In the Proposing Release, the Commission set forth three reasons why adoption of Rule 15c6–1 would be necessary or appropriate. First, at any given point in time, fewer unsettled trades would be subject to credit and market risk, and there would be less time between trade execution and settlement for the value of those trades to deteriorate. Second, the proposed Rule would reduce the liquidity risk among the derivative and cash markets and reduce financing costs by allowing investors that participate in both markets to obtain the proceeds of securities transactions sooner. Finally, the Commission noted that a shorter settlement timeframe could encourage greater efficiency in clearing agency and broker-dealer operations.

Commentators that support T+3 settlement believe that the new Rule would facilitate these goals. Commentators stated specifically that the Rule would significantly reduce settlement risk. The Federal Reserve Board stated that settlement systems for securities and other financial

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[12] Commentators opposed to Rule 15c6–1 predominantly expressed concern about the cost implications of the rule, which are addressed in section II.B of this release. Fewer than ten commentators indicated that the rule was unnecessary or that Commission goals could be achieved by other means. See discussion, *infra*, at pp. 19–21.

[13] Division of Market Regulation, The October 1987 Market Break ("Market Break Report") 10–20 (February 1988).

[14] *Id.* at 10–16. Clearing firms stand between the clearing corporation, on the one side, and market professionals, introducing firms, and public investors on the other. Many customers, institutional and otherwise, open their accounts with an introducing broker. Introducing brokers use executing brokers (which are usually members of a clearing agency) to execute and clear customer trades. If the customer fails to meet margin calls made by the executing firm or fails to pay on T+5 the settlement amount for securities it has purchased, the introducing or executing broker must pay that debt. If the amount exceeds the introducing broker's ability to pay and it fails, the clearing member executing firm will be responsible for the customer's debt. If the clearing member fails to meet its obligation to the clearing agency, the clearing agency will suspend and cease to act for that member. Clearing agencies ceased to act for three clearing members during the week of October 19, 1987. The Depository Trust Company ("DTC") and NSCC ceased to act for Metropolitan Securities ("Metropolitan"), American Investors Group, and H.B. Shaine and Co. ("Shaine"). The Options Clearing Corporation ("OCC") ceased to act for Shaine, and MBS Clearing Corporation ceased to act for Metropolitan. *Id.*

[15] The Market Reform Act of 1989: Joint Hearings on S. 648 before the Subcomm. on Securities and the Senate Comm. on Banking, Housing and Urban Affairs, 101st Cong., 1st Sess. 225 (Oct. 26, 1989) (statement of Nicholas F. Brady, Secretary of the Treasury).

[16] Luncheon Address: Perspectives on Payment System Risk Reduction by E. Gerald Corrigan, President, FRBNY, reprinted in The U.S. Payment System: Efficiency, Risk and the Role of the Federal Reserve 129–30 (1990).

[17] The Issues Surrounding the Collapse of Drexel Burnham Lambert, Hearings before the United States Congress, Senate Committee on Banking, Housing, and Urban Affairs, 101st Cong., 2d Sess. 5 (1990) (testimony of Richard C. Breeden, Chairman, Commission) ("Drexel testimony").

[18] Ordinarily, lenders who accept securities in DTC's pledge program release those securities to the debtor's control without requiring full payment of outstanding loans, provided payment (including refunding through new pledge loans) occurs before the end of the day. This permits the debtor (typically, a broker-dealer) to deliver the pledged securities against payment to another participant or to NSCC during both of DTC's delivery processing cycles. Because settlement of transactions typically starts with delivery of securities, with the deliverer assuming the risk that payment will be made at or before the end of the day, release of pledged collateral can help maximize the number of trades that settle while shifting some credit risk to the deliverer's bank.

When Drexel experienced financial difficulties, however, its lenders and counterparties took steps to reduce their credit risk exposure to Drexel. In particular, because of concern about what might happen during the day or the quality of collateral that might be posted at the end of the day, lenders insisted upon repayment before release of securities, which meant Drexel could not settle open transactions even as it was winding down its portfolio. See Drexel testimony at 47.

[19] Initiatives in clearance and settlement reform undertaken since 1987 are outlined in Appendix 2.

[20] See Remarks by Alan Greenspan before the Annual Convention of the SIA (November 30, 1988).

instruments are a potential source of systemic disturbance to financial markets and to the economy.[21] In the Board's view, the key features of an ideal settlement system are the settlement of trades immediately after execution and payment in same-day funds, and compressing the settlement timeframe for corporate securities to three days from five days is an important and achievable step toward this ideal. Similarly, the FRBNY noted that shortening the settlement cycle decreases the opportunity for adverse developments to occur between the execution and settlement of each trade, thus lowering the credit and market risks that can arise when settling individual transactions. A move to T+3 reduces the total volume and value of outstanding obligations in the settlement pipeline at any point in time; the FRBNY believes this will better insulate the financial sector from the potential systemic consequences of serious market disruptions.[22]

Commentators stated also that the Rule will facilitate risk reduction by achieving closer conformity between the corporate securities markets and the markets for other securities that currently settle in fewer than five days (*i.e.*, government securities and derivative securities), and will encourage market participants to achieve greater efficiencies in clearing agency and broker-dealer operations. For example, the Government Securities Clearing Corporation ("GSCC") stated that settlement risk can arise from dissimilarities in settlement cycles among markets as well as the length of a specific market's settlement cycles, which can lead to artificial delays in moving securities and make it more difficult to establish risk reduction mechanisms such as common netting and cross margining arrangements.[23] The American Bankers Association echoed these views, noting that by reducing the lag between the settlement of derivatives and government securities and the settlement of corporate securities, investors that participate in both markets will be able to reduce their financing costs and obtain the proceeds of their securities transactions on a more timely basis.[24]

The Commission believes that the benefits of three-day settlement will inure to all market participants. As noted in the Proposing Release, the value of securities positions can change suddenly causing a market participant to default on unsettled positions. Because the markets are interwoven through common members, default at one clearing corporation or by a major market participant or end-user[25] could trigger additional failures, resulting in risk to the national clearance and settlement system ("system").[26] This risk is even more acute given the growth of the over-the-counter derivative product markets where dealers shift risk exposure among major market participants in international centers and end-users.[27] Finally, in a T+3 settlement environment, because the settlement date will be accelerated by two business days, a broker-dealer who executes a trade based on a customer's verbal agreement will be able to take action as much as two business days sooner than in a T+5 environment to mitigate losses in the event of the customer's cancellation.

B. Cost of Systems and Operational Changes

The Commission believes that the potential benefits from shortening the settlement cycle by two business days outweigh the costs associated with such a change. The benefits of a shorter settlement cycle include reduced credit, market, and systemic risk. Perhaps no single conclusion from the Bachmann Task Force ("Task Force") Report[28] is more significant than the equation "Time = Risk." A shorter settlement cycle not only reduces the number of outstanding trades, but significantly changes how market participants calculate credit and market risk.

Activity in the national clearance and settlement system measures in the tens of billions of dollars, with continuous-net-settlement ("CNS") processing at the National Securities Clearing Corporation ("NSCC") averaging over $22.5 billion in corporate equity and debt transactions a day. This activity creates considerable risk to clearing corporations, including credit risk, market risk on open contractual commitments, and systemic risk because clearing corporations interpose themselves between purchasers and sellers of securities. The Task Force found that the risk reduction to one clearing corporation, NSCC, from reducing the standard settlement cycle to T+3 in the event of the failure of an average large member could range from $6.5 million (or 58%) to $208 million (or 55%) in a worst case scenario.[29] Equally significant, if the temporary insolvency of eleven average large firms were to occur on a typical trading day, T+3 would reduce the risk to NSCC by $72 million (or 59%) to $2.3 billion (or 55%) in a worst-case situation.[30]

Notwithstanding these benefits, some commentators, generally small retail broker-dealers, thought that the costs involved in shortening the settlement cycle would outweigh the benefits. Although they were unable to quantify their estimated expenses with precision, these commentators noted problems with receipt of confirmation, payment by check, and possible financing costs resulting from the rule.[31] Commentators

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[21] Letter from William W. Wiles, Secretary to the Board, to Jonathan G. Katz, Secretary, Commission (September 1, 1993). See also Bank for International Settlements, Delivery Versus Payment in Securities Settlement Systems (September 1992).

[22] Letter from William J. McDonough, President, FRBNY, to Jonathan G. Katz, Secretary, Commission (August 27, 1993).

[23] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[24] Letter from Sarah A. Miller, Senior Government Relations Counsel, American Bankers Association, to Jonathan G. Katz (June 30, 1993).

[25] See Securities Exchange Act Release No. 32256 (May 14, 1993), 58 FR 27486 (concept release regarding changes to Commission's net capital treatment of derivative products); and the Group of Thirty, Derivatives: Practices and Principles (July 1993).

[26] Clearing corporations function as, among other things, post-trade processing facilities and guarantors of post-trade settlements. Upon reporting matched trade information to its members, the clearing corporation becomes the counterparty to every trade and guarantees payment and delivery. See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 ("Full Registration Order"). To protect against the credit risk presented by unsettled positions, clearing corporations obtain contributions from their members to a pool of funds designed to provide a ready source of liquidity in case of a member default. See Securities Exchange Act Release Nos. 16900 (June 17, 1980), 45 FR 4192 (announcing the Division of Market Regulation's standards for the registration of clearing agencies); 20221 supra; and 30879 (July 1, 1992), 57 FR 30279 (order approving modifications to the CNS portions of NSCC, Midwest Clearing Corporation, and Securities Clearing Corporation of Philadelphia clearing fund formulas). Any sizable loss in liquidating the open commitments of a defaulting member, however, would be assessed pro rata against all clearing members. See e.g., NSCC Rule 4. See also, Market Break Report, Chapter 10.

[27] Task Force on Securities Settlement Report to the Governor of The Bank of England (June 1993).

[28] Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets ("Task Force Report") (May 1992).

[29] Task Force Report at 35.

[30] *Id.* at 36.

[31] Based on the information received from commentators upon staff requests for further data, the firms' estimated costs ranged from $0 to $5 million. Three firms stated that they expected to incur little or no cost. Other firms cited annual cost figures as follows: $12,000, $20,000, $55,000, $75–100,000, $87,000, $99,300, $1 million, $3.6 million, and $5 million.

Two clearing firms provided specific cost data. One clearing firm stated that it would have initial start-up costs of approximately one million dollars to make changes to its cash management and trade processing systems and procedures. Letter from George Minnig, Managing Director, Pershing Division of Donaldson, Lufkin and Jenrette

supporting the Rule, including exchanges, the ABA, the Securities Industry Association ("SIA"), and a significant number of broker-dealers representing a large majority of the retail customer base indicated that the risk reduction benefits of Rule 15c6–1 were important to the national clearance and settlement system, and they therefore supported the Rule.

The Commission is sensitive to the costs necessary for transition to a shorter settlement timeframe but on balance believes that the benefits to the financial system outweigh those costs. Moreover, the Commission believes Rule 15c6–1 creates an incentive for broker-dealers, particularly retail firms, to encourage timely customer payment and improve management of cash flows. With more than 19 months before the effective date of Rule 15c6–1, the Commission expects broker-dealers will have adequate notice to educate customers about the need for prompt payment and will have adequate time and incentive to implement changes to reduce the need for financing.

As discussed in more detail in the Final Regulatory Flexibility Analysis ("FRFA"), a potentially large expense for retail firms likely will be interest expenses, while a few firms projected a cost increase from hiring additional personnel.[32] Many of the cost estimates are based on assumptions of static circumstances. Firms generally projected costs, or claimed the move to T+3 settlement would be impossible for them, by assuming continued reliance upon the U.S. mail for delivery of confirmations and checks and no change in the behavior of customers who do not provide payment until receipt of confirmations; all without considering use of new practices and technologies.

The Commission believes that alternatives exist to speed processing funds payments. For example, broker-dealers could encourage clients to deposit funds or securities with the broker-dealer upon placing an order, or to send funds and securities that day. Existing technology allows firms to advise customers immediately after trade execution what the net cost is. Sixteen commentators indicated that many customers will not pay by check until they see the written confirmation which means that funds won't arrive at the firm until after a "round-trip" mailing.[33]

Alternatively, firms could establish facilities with local banks that would permit customers to authorize payments to firms using electronic funds transfer systems. One type of electronic funds transfer system is the Automated Clearing House ("ACH") system operated under the guidelines established by the National Automated Clearing House Association ("NACHA"),[34] which is now used by several retail service industries for periodic and occasional funds payments. A study done in 1990 by the U.S. Working Committee of the Group of Thirty indicated that the costs of ACH may be offset by a reduction of internal costs arising from the processing of checks and elimination of financing costs currently incurred for checks received after T+5 and could be absorbed by the initiating firm.[35] Several commentators noted that firms and customers may be uncomfortable using these systems for security, administrative, and other reasons.

Several broker-dealers have expressed reluctance to use ACH because of liability that may result from a customer exercising his sixty-day right of rescission in the current ACH system. In response to this concern, NACHA recently passed a rule that will, effective April 1994, require a receiving depository financial institution to obtain a signed affidavit from a consumer when the consumer claims that a transaction to his or her account is unauthorized or that an authorization had been revoked. NACHA is confident that this rule amendment will make the ACH network more attractive for retail security transactions.

Seven retail broker-dealers, including the three retail broker-dealers that believe the Rule is not necessary, suggested that the Commission adopt a daily mark-to-market instead of shortening the settlement cycle to three days. These commentators believe that a daily mark-to-market is the best way to reduce "real" systemic risk, *i.e.*, market risk, as opposed to time risk. The commentators suggested that the Commission propose a pass-through mark-to-market similar to the one NSCC imposes on open trades in its CNS system.[36]

The Commission believes the mark-to-market mechanism raises more concerns than it does solutions, inasmuch as it reduces, but does not eliminate, the potential risk of unsettled trades. Indeed, the Bachmann Task Force concluded that shortening the settlement cycle significantly reduced market risk to clearing agencies when a major participant defaults compared to a system that only required pass-through of daily marks-to-the-market. Moreover, it would appear to require firms to have the capacity to collect funds from customers to meet some or all mark-to-market obligations, particularly in volatile markets where the firm might not have enough working capital to meet the mark-to-market payment obligation. In addition, because the firm would not have any collateral to post, financing could be difficult to obtain except on an unsecured basis. In this regard, shortening the settlement cycle should be more manageable for firms because the firm can post the customer's securities as collateral for financing pending settlement with the customer.

As stated above, the Commission believes that greater risk reduction can be achieved through reducing the settlement timeframe. While a risk reduction measure such as a mark-to-market may be more readily acceptable to the retail segment of the industry, the Commission believes that retail broker-dealers and their customers can achieve T+3 settlement given the extended transition period for implementation.

C. Building Blocks

Several commentators expressed concern that certain "building blocks"

Securities Corporation ("Pershing"), to Jonathan G. Katz, Secretary, Commission (June 21, 1993). The other responding clearing firm stated that its informal analysis indicated that it would have annual costs, mainly based on financing late payments, of approximately five million dollars. Letter from Jeffrey R. Larsen, Senior Legal Counsel, Fidelity Investments Institutional Services Company, Inc. ("Fidelity"), to Jonathan G. Katz, Secretary, Commission (June 24, 1993).

[32] The Commission notes that the cost data received in general were very rough estimates, not based on detailed studies, and the Commission expects that actual costs will vary among firms depending on many factors, including the nature and location of the firm's clientele and the level of technology employed by the firm.

[33] In addition, three commentators indicated that the customer needed to review the confirmation to eliminate unauthorized transactions. Commentators raise valid concerns about unauthorized transactions and the utility of the written confirmation in detecting unauthorized transactions. Nevertheless, unauthorized transactions generally represent a small percentage of all trades executed each day, and the key to avoiding those transactions is prompt communication of key trade terms to the customer, which could be accomplished orally as well as in writing. Even more to the point, firms should take corrective action whenever they discover unauthorized transactions in customer accounts without regard to when the customer receives a confirmation.

[34] ACH is a domestic electronic payment system operated under the direction of NACHA and is utilized by over 22,000 banks, thrifts, and other depository financial institutions on behalf of corporations and individuals.

[35] U.S. Working Committee, Implementing the Group of Thirty Recommendations in the United States (November 1990).

[36] See *e.g.*, letter from Robert C. Disset, Director, Operations Division, A.G. Edwards & Sons, Inc. ("A.G. Edwards"), to Jonathan G. Katz, Secretary, Commission (June 1, 1993).

must be in place before the Commission mandated T+3 settlement. The building blocks most frequently cited were an interactive institutional delivery system at securities depositories (to allow institutional broker-dealers, money managers, and custodians to confirm trades, correct errors, and instruct release of funds and securities on an intraday basis), making as many securities as possible eligible for processing in those depositories, and improving retail customer payment systems to broker-dealers. Commentators also identified several regulatory initiatives they believe are predicates to T+3 settlement, including changes in the Commission's confirmation rule (Rule 10b–10), broker-dealer financial responsibility rules (Rules 15c3–1 and 15c3–3), and the Federal Reserve Board broker-dealer credit rules (Regulation T). These concerns are described briefly below and in greater detail in appendix 3.

The Commission believes that none of these building blocks justify delaying the Commission's adoption of Rule 15c6–1. Efforts to implement several of the building blocks commentators identified are underway, and the Commission reasonably anticipates implementation will be completed before June 1, 1995, the effective date of Rule 15c6–1. Indeed, if the Commission were to defer action on this Rule, those efforts might well languish. Moreover, certain changes, particularly those that involve regulation, are best considered after a date for shortening the settlement cycle has been established, as the Commission is doing today. Of course, the Commission will monitor efforts to address these and other concerns.

1. SRO and Industry Initiatives

To facilitate three-day settlement, The Depository Trust Company ("DTC") is developing an interactive Institutional Delivery ("ID") system[37] that would permit real-time confirmation/affirmation of institutional trades. In March 1993, DTC distributed to its participants and other ID system users a design paper containing detailed descriptions of the various features of the interactive ID system as well as a tentative implementation schedule for each. DTC proposes to introduce certain features in late 1993, with the interactive receipt of trade input and affirmations, and the interactive distribution of confirmations and Eligible/Ineligible Trade Reports, scheduled for the first half of 1994.

Institutional trades comprise a large part of the U.S. securities market. As of the third quarter of 1992, institutions held 29% of the total outstanding corporate equity securities in the U.S., totaling over $1.4 trillion.[38] During 1992, institutions accounted for two-thirds, and perhaps more, of daily share volume on the NYSE.[39]

DTC's ID system is the workhorse for processing institutional trades in the national ID system, which links broker-dealers, investment managers, and custodian banks through a network of electronic communications systems to speed confirmations, settlement instructions, and corrections among the agents for institutional investors. Currently, 81% of institutional transactions are affirmed by T+1, and 94% are affirmed by T+2. An interactive ID system will allow the processes of trade data input, confirmation output, affirmation, and issuance of settlement instructions to be completed in a matter of minutes. Consequently, with an interactive ID system in place, the number of institutional trades that are affirmed by T+2 could approach 100%. DTC has filed with the Commission a proposed rule change under section 19(b)(1) of the 1934 Act outlining its proposed enhancements to the ID system.[40] Commission staff will review the proposal in light of the requirement under section 17A of the 1934 Act that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities.

Some commentators believe that T+3 settlement would be difficult to achieve without making all securities depository eligible. Currently, only a small fraction of securities listed on an exchange, the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), or the over-the-counter ("OTC") Bulletin Board are not eligible for deposit at a registered clearing agency. Accordingly, the Commission does not believe this is a serious impediment to T+3 settlement, although the percentage of ineligible securities must remain minuscule. The Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty ("Legal and Regulatory Subgroup") is drafting a uniform rule intended to incorporate a depository eligibility requirement into a listing standard for each registered national securities exchange and into the eligibility requirements of NASDAQ. The Commission expects the exchanges and the National Association of Securities Dealers ("NASD") to submit proposed rule changes to the Commission under section 19(b)(1) of the 1934 Act in the near future. Although the rules, if approved, would not reach settlement of transactions in securities that are not listed on a national exchange or NASDAQ, the Commission believes preliminarily that this effort could be an important step towards improving the efficiency of the national clearance and settlement system, and indeed towards facilitating T+3 settlement.

The Commission did not solicit comment on the desirability of settling securities transactions in same-day funds. However, six commentators stated that additional risk reduction could be gained by converting to a same-day funds payment system. DTC and NSCC recently distributed a memorandum outlining their plans and timetable for converting to same-day funds settlement and detailing how DTC and NSCC believe many aspects of the same-day funds settlement system will function. DTC and NSCC expect to implement the proposal by late 1994 or early 1995. The Commission supports the efforts of the SROs and will continue to work with the SROs towards early implementation of the initiatives.

2. Regulatory Initiatives

Some commentators suggested that implementation of a T+3 settlement period will require amendments to the Commission's confirmation rule, Rule 10b–10 adopted under the 1934 Act.[41] That rule, however, does not require the confirmation to be received prior to settlement, and therefore the current practice of sending the confirmation the day after trade date will satisfy Rule 10b–10 in a T+3 settlement cycle. Implementation of T+3, however, may alter the confirmation's utility as a customer invoice because confirmation delivery and transfer of customer funds and securities may not be possible within the three-day settlement period.

[37] In the ID system, brokers notify the depository of trades made by an investment manager on behalf of an institutional client. The investment manager and the client's custodian banks are notified of the trade and asked to affirm that the information is correct. Trades affirmed by T+3 settle automatically by book-entry at the depository on T+5.

The majority of settlements between broker-dealers and their institutional customers are processed through the National Institutional Delivery System ("national ID system" or "NIDS") which includes links with three securities depositories (Midwest Securities Trust Company, Philadelphia Depository Trust Company, and DTC) and their member broker-dealers. See, e.g., Securities Exchange Act Release No. 25120 (November 13, 1987), 52 FR 44506.

[38] NYSE, Fact Book for the Year 1992 (April 1993) at 28.

[39] For the first six months of 1993, an average of 264 million shares were traded daily on the NYSE.

[40] See File No. SR–DTC–93–07.

[41] 17 CFR 240.10b–10.

The Commission therefore encourages broker-dealers to consider changes to their procedures for delivery of confirmations, as necessary, to accommodate three-day settlement. Such changes might include dispatch on trade date from offices within one-day delivery range of the customer or transmission of confirmations by facsimile or other electronic means.

Commentators also asked the Commission to review Rules 15c3–1 and 15c3–3 to determine whether amendments will be required to conform those rules to a shorter settlement timeframe. Rule 15c3–1[42] establishes the net capital requirements for brokers and dealers. To determine net capital, Rule 15c3–1 requires a broker or a dealer to deduct from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables. A broker or a dealer also must deduct certain specific percentages from the securities and commodity positions that it carries in its proprietary account. The rule also requires that a failed to deliver contract that has been outstanding for a certain specified period of time be treated as a proprietary position of the broker-dealer and subject to a percentage deduction. This time period is dependent upon the time from the settlement date.[43]

Rule 15c3–3[44] requires brokers and dealers to maintain possession or control of all customer fully paid and excess margin securities. As with Rule 15c3–1, some of the requirements imposed on brokers and dealers by Rule 15c3–3 are dependent upon the time from settlement. One commentator referred specifically to Rule 15c3–3(m).[45] Rule 15c3–3(m) requires that a broker or dealer that has executed a sell order for a customer, and has not obtained possession of such securities from the customer within ten business days after the settlement date, must immediately close the transaction with the customer by purchasing securities of like kind and quantity. The Commission notes that Rule 15c6–1 merely changes the number of days following the trade date that settlement will occur. Therefore, being keyed to settlement date, Rules 15c3–1 and 15c3–3, including Rule 15c3–3(m), are consistent with Rule 15c6–1.

Commentators urged the Commission, in conjunction with other regulators, to review Regulation T ("Reg T")[46] to determine how, if at all, Reg T should be modified. Currently, Reg T does not require that any action be taken unless a customer fails to pay for securities within seven business days of the trade date. The commentators were concerned that Reg T as currently drafted could leave customers and broker-dealers with the impression that payment from the customer is not due in a three-day settlement environment until the expiration of the seven-day period specified by Reg T. The Commission understands that the Federal Reserve Board staff has undertaken a general review of Reg T, and the Commission has already asked the Federal Reserve Board staff informally to consider whether conforming amendments to Reg T would be necessary in a three-day settlement environment.

In the Proposing Release, the Commission solicited comment on whether the Commission should require disclosure of whether the securities being offered in an initial public offering ("IPO") are depository eligible, and if not, why not. Five commentators supported the adoption of a disclosure requirement for IPOs as described above. Three commentators stated that a disclosure requirement was not necessary. None of the commentators, however, articulated the basis for their support. Nevertheless, the Commission believes that disclosure regarding whether or not an IPO will be eligible for deposit at a securities depository may be appropriate. Accordingly, the Commission is directing the staff to pursue requiring disclosure in those instances when neither the issuer nor the underwriter intends to make the securities depository eligible.

D. Implementation Date

The Commission believes that the benefits of a shorter settlement cycle exceed the costs associated with implementing that change, including the cost to firms to finance purchases by retail customers that traditionally rely on the U.S. mail service to deliver checks. The potential reduction in systemic risk coupled with the opportunity to provide smoother transmission of value from markets using a five-day settlement convention to markets using earlier settlement timeframes (such as the next-day settling government securities and derivative product markets) are essential to maintaining investor confidence and the premier competitive position of U.S. securities markets. As one commentator stated, "The speed with which market conditions can change today and the risk inherent in the five day settlement timeframe, warrant consideration of an earlier implementation date. We believe that the move to a three business day timeframe for settlements could and should occur earlier than 1996."[47] Although the transition to T+3 will entail costs and changes, the Commission believes the U.S. securities industry is more than equal to the challenge given current technology and financing sources.

The Commission is adopting Rule 15c6–1 with an effective date of June 1, 1995. The Commission believes that changes in industry practice and custom such as an earlier settlement timeframe must involve marketplaces, marketplace regulators, and participants in those markets acting cooperatively. In connection with this, the Commission recognizes that some broker-dealers need to make operational and procedural changes to comply with a three-day settlement period and that certain building blocks must be in place prior to compressing the settlement cycle. In view of the Commission's desire to minimize the potential cost of complying with the Rule and the need for more work at the SRO and regulatory levels, the Commission is adopting an extended transition period to allow affected parties to implement necessary changes gradually.

Forty of the commentators that support adoption of proposed Rule 15c6–1 suggested that the proposal be implemented on January 1, 1996, or earlier. The Cashiers' Association of Wall Street, Inc. ("Cashiers' Association"), the Public Securities Association ("PSA"), and Data Management Division of Wall Street ("Data Management Division") agreed that the proposal should be implemented in 1996 but believed implementing the proposal in January 1996 would place an excessive strain on broker-dealers' production systems.[48] These commentators suggested implementing the proposed Rule late in the first quarter or second quarter of 1996 to allow broker-dealers more time to complete year-end processing.

[42] 17 CFR 240.15c3–1.

[43] See Rule 15c3–1(c)(2)(ix).

[44] 17 CFR 240.15c3–3.

[45] 17 CFR 240.15c3–3(m).

[46] Reg T, 12 CFR part 220, *et. seq.*, imposes, among other things, initial margin requirements and payment rules on securities transactions. See 15 U.S.C. § 78a *et seq.*, part 220.

[47] Letter from Albert Peterson, Executive Vice President, State Street Bank and Trust Company, to Jonathan G. Katz, Secretary, Commission (June 2, 1993).

[48] See letters from Paul Farace, President, Cashiers Association, to Jonathan G. Katz, Secretary, Commission (June 14, 1993); and letter from Salvatore N. Cucco, President, Data Management Division, to Jonathan G. Katz, Secretary, Commission (June 16, 1993).

Eight commentators suggested specifically that the proposed Rule be deferred until the necessary building blocks are in place or for an indefinite period, three retail broker-dealers stated that the Rule was not necessary, and one broker-dealer specifically opposed implementation earlier than January 1, 1996.

The Commission is adopting Rule 15c6–1 with an effective date of June 1, 1995, rather than January 1, 1996, for two principal reasons. First, the Commission believes it is better not to change the settlement cycle timeframe at the same time market participants, custodians, and investors might be distracted by other matters, such as year-end tax and trading concerns. Second, June 1, 1995, is reasonably close so as to draw the immediate attention of those who must take steps to initiate compliance, and is reasonably far-off to permit completion of those preparatory steps. An effective date of January 1, 1996 or June 1, 1996, would continue to expose securities markets to risks that can and should be reduced. Accordingly, the Commission believes a 19 month delay in the effective date of Rule 15c6–1 is appropriate. Nevertheless, the Commission will monitor industry efforts toward implementation and will take all appropriate steps in that regard.

As stated above, the Commission encourages broker-dealers who wish to limit financing costs or the use of overnight mail to explore the available alternatives to payment by check through the U.S. mail. In addition, the Commission believes that customer education regarding those alternatives is paramount to successful implementation of T+3 settlement. For example, broker-dealers can require clients to deposit funds or securities upon placing an order, educate customers on the necessity of providing funds earlier, and emphasize the usefulness of in-house brokerage accounts. Alternatively, broker-dealers could encourage customers to use an electronic payment system, such as the ACH system, to pay for transactions.

The Commission recognizes that it must play its part in facilitating a smooth transition to shorter securities settlements. Adoption of Rule 15c6–1 may entail expense and may be unpopular among those who would prefer to see no change in current practice or would prefer to see next-day and even same-day settlement prevail. Reducing systemic risk is important to the safety and vitality of securities markets, and the Commission's efforts and resources remain committed to those goals. The Commission invites a continuing dialogue and partnership with all interested parties.

III. Scope of Rule 15c6–1

A. Application of Rule 15c6–1 to Municipal Securities, Limited Partnership Interests, New Issues, Mutual Funds, and Mortgage-Backed Securities

The Commission received approximately 66 comment letters addressing the scope of Rule 15c6–1. Generally, those commentators were supportive of the Commission's efforts to include a broad range of products within a shortened settlement cycle. The Commission has considered these comments, and for the reasons discussed below, the Commission believes that Rule 15c6–1 appropriately applies to securities issued by mutual funds, private-label mortgage-backed securities, and limited partnership interests that are listed on an exchange. The Rule does not apply to municipal securities, and the Commission has determined that, in addition, unlisted limited partnership interests and new issues should be exempt from the Rule for the reasons discussed below. Finally, the Rule has been revised to provide that the Commission may, by order, exempt additional securities from the scope of the Rule.

1. New Issues

Several commentators voiced concerns that new issues of securities[49] could not be settled by T+3 due to the need to deliver a prospectus prior to settlement.[50] Specifically, commentators have indicated that because the prospectus cannot be printed prior to the trade date (the date on which the securities are priced), the prospectus printing and delivery process cannot be completed within a T+3 timeframe. The problems described by commentators would seem to be specific to firm commitment offerings where the underwriter must make payment with its own funds to the issuer on a specified date, whether or not its customers have purchased and paid for the securities.[51]

To address this problem, the Commission is modifying the Rule to provide a limited exemption from T+3 for the sale of securities for cash pursuant to firm commitment offerings.[52] The exemption is limited to sales to an underwriter by the issuer and initial sales by members of the underwriting syndicate and selling group. Any secondary resale of such securities must be settled within T+3.

The Commission recognizes that the comment process may not have identified all situations or types of trades where settlement on T+3 would be problematic. Accordingly, the Rule has been revised to authorize the Commission to exempt, by order, additional types of trades from the scope of Rule 15c6–1.[53] This revision and the exemption for firm commitment offerings should assure that the Rule will not interfere unduly with the settlement of securities whose characteristics make it difficult to operate within the framework of Rule 15c6–1.

2. Municipal Securities

In proposing Rule 15c6–1, the Commission invited commentators to address the merits of including municipal securities within the scope of the Rule. Due to differences between the corporate and municipal securities markets and the unique role the MSRB has in overseeing the municipal securities market, and based in part on comments received, the Commission has determined not to include municipal securities within the scope of Rule 15c6–1. The Commission makes this determination, however, with the expectation that the MSRB will take the lead in implementing three-day settlement of municipal securities by June 1, 1995, the implementation date of the new Rule.

Over fifty commentators favored including municipal securities within the scope of the Rule. Those commentators believe that maintaining separate settlement cycles for corporate and municipal securities is unnecessary and would impose significant cost and operational difficulties on industry participants.

Several other commentators favor excluding municipal securities from the scope of Rule 15c6–1, citing the many special features of the municipal

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[49] A new issue of securities includes both IPOs and offerings of additional debt or equity issues by reporting companies.

[50] See section 5 of the Securities Act of 1933 ("1933 Act") (15 U.S.C. § 77e).

[51] In a firm commitment offering, the underwriter purchases the securities from the issuer, generally for a fixed price, and then re-sells the securities to the public, thereby assuming the risk of market fluctuations in the price of securities.

[52] The exemption will apply only to offerings when cash is the sole form of consideration given in exchange for the securities. This requirement is intended to limit the exemption to the conventional firm commitment public offerings which are associated with the problems raised by the commentators rather than including transactions such as issuer exchange offers or business combinations.

[53] Concurrent with the adoption of the Rule, the Commission is delegating to the Director of the Division of Market Regulation authority to exempt such additional types of trades.

securities markets. Those features include a lower confirmation/affirmation percentage of transactions in municipal securities than corporate securities, lack of CUSIP numbers in many municipal securities,[54] non-depository eligibility of many municipal issues, and the greater reliance on confirmations by purchasing investors.

The Commission believes that the benefits of reduced systemic, market, and credit risk justify reducing the settlement timeframe for municipal securities from five to three business days consistent with Rule 15c6–1. The Commission recognizes, however, that the differences between the corporate and municipal securities markets may justify a different approach to implementing T+3 settlement for municipal securities than corporate securities. For example, while publicly-traded corporate debt issuances number in the thousands, there are over one million municipal securities "maturities," each of which is a separate security for purposes of trade clearance and settlement and not all of which are depository eligible. In addition, approximately 80,000 entities issue municipal securities, which are not subject to the provisions of the Securities Act of 1933 ("1933 Act") and are exempted from many provisions of the 1934 Act.

Despite these differences, significant progress has been made towards more efficient, automated clearance and settlement of municipal securities.[55] First, the Commission understands that the system changes at clearing agencies necessary for T+3 settlement of municipal securities should be functional by July 1, 1994. Second, as a result of recent changes to MSRB rules, most, if not all municipal securities dealers and institutional investors have access (directly or through correspondents) to clearing agencies for automated clearance, confirmation, and settlement of their municipal securities trades. Third, only a fraction of newly-issued municipal securities are not routinely made eligible for deposit at securities depositories, and efforts are underway to address the remaining newly-issued securities. This progress has been the result of cooperative efforts by the Commission, the MSRB, clearing agencies, and their members.

Although commentators have raised concerns about the differences between municipal and other debt securities, the Commission believes that these differences can be overcome. For example, it may be appropriate to consider exempting certain types of municipal securities trades for a certain amount of time. Similarly, it might be appropriate to explore alternatives to the confirmation as the means of identifying securities that have been sold and as a risk disclosure document. It might also be appropriate to consider exemptions for trades in connection with firm commitment underwritings and for trades in securities for which CUSIP numbers are not required.

The Commission also understands commentator concern about potential costs to municipal securities dealers, such as financing retail customer purchase transactions pending receipt of payment from customers. With sufficient notice, the Commission believes that the municipal securities industry can identify and address these costs in ways similar to other broker-dealers.

In summary, the Commission is confident that municipal securities dealers and market participants, under the guidance of the MSRB, can accomplish the goal of shortening the settlement timeframe by two business days and that regular-way settlement for municipal securities can be subject to the same timetable as other securities. Accordingly, the Commission is requesting a report from the MSRB within six months outlining a time schedule in which the MSRB intends to implement T+3 in the municipal securities market.

3. Limited Partnership Interests

The Commission invited comment as to whether limited partnership interests should be included in the scope of Rule 15c6–1. Eleven commentators supported inclusion of limited partnership interests, citing the difficulty caused by different settlement dates for different types of securities. Eight commentators opposed the inclusion of limited partnership interests.

Many commentators distinguished between limited partnership interests that are listed on an exchange or on NASDAQ ("listed limited partnerships") and those that are not listed ("unlisted limited partnerships"). Six commentators stated that listed limited partnerships should be included in the scope of the Rule, while no commentator specifically stated that listed limited partnerships should be excluded from the scope of the Rule. Six commentators stated that unlisted limited partnerships should be excluded from the scope of the Rule, while no commentator specifically stated that unlisted limited partnerships should be included in the scope of the Rule.

Accordingly, the Commission is modifying the Rule to distinguish between trades involving listed versus unlisted limited partnership interests, including listed limited partnership interests and excluding unlisted limited partnership interests. First, the majority of commentators appear to support the inclusion of listed limited partnerships. Second, as exchange or NASDAQ traded securities, these interests currently settle in a five-day timeframe and exclusion of listed limited partnerships from Rule 15c6–1 would unnecessarily contribute to the bifurcation of the settlement cycle in these markets. Under Rule 15c6–1, therefore, listed limited partnerships will be required to settle by T+3.

Many commentators expressed concern, however, about the ability to settle unlisted limited partnerships by T+3, indicating that extended time periods are required to settle trades in these instruments. In order to settle, transfer documentation must be obtained in order to determine whether the transfer of ownership is permitted on the books and records of the issuer.[56] In addition, several commentators noted that there is not an active secondary market in unlisted limited partnership interests. Therefore, the Commission has determined to exempt unlisted limited partnership interests from the Rule.

[54] CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures. Although most outstanding municipal securities have CUSIP numbers, there probably are several thousand maturities that do not.

[55] For example, the Commission recently approved a rule proposed by the MSRB requiring the use of automated clearance and settlement systems on most Delivery Versus Payment and Receipt Versus Payment customer transactions. Securities Exchange Act Release No. 32460 (July 22, 1993), 58 FR 39260. In addition, the MSRB has filed with the Commission a proposed rule change that will require use of automated clearance and settlement systems on most interdealer transactions. Securities Exchange Act Release No. 32262 (May 4, 1993), 58 FR 27757. That proposed rule change was filed in concert with NSCC's recently implemented comparison system which accelerates the comparison cycle for municipal securities. Securities Exchange Act Release No. 32747 (August 13, 1993), 58 FR 44530. The Commission also approved an MSRB proposal requiring most interdealer transactions in municipal securities that are eligible for book-entry settlement in a registered securities depository to be settled by book-entry through the facilities of that depository or in an interface with another registered securities depository.

[56] Required paperwork varies among different issuers, and the processing requirements may take weeks. According to the comment letter from the Chicago Partnership Board, some issuers require that blank paperwork be ordered after a trade is agreed to, and these same issuers often take weeks to deliver the paperwork once ordered. Letter from James Frith, Jr., President, Chicago Partnership Board, to Jonathan G. Katz, Secretary, Commission (June 4, 1993).

4. Securities Issued by Mutual Funds

As proposed, Rule 15c6–1 would include securities issued by investment companies.[57] The Commission noted that mutual funds often permit customers to purchase shares by telephone and requested comment on whether a T+3 settlement timeframe would make it necessary for mutual funds and broker-dealers to implement operational changes to confirm the sale to the investor, to receive the proceeds, and to settle the transaction.[58] Twenty-five commentators believed the proposed three-day settlement should be applied to securities issued by mutual funds. These commentators stated that the exclusion or delayed implementation of a shortened settlement cycle for mutual funds would complicate rather than simplify the transition to T+3. Seven commentators believed the Rule should provide an exemption for securities issued by mutual funds.

The Commission has determined that Rule 15c6–1 should apply to broker-dealer contracts for the purchase and sale of securities issued by investment companies, including mutual funds shares. A broker-dealer selling securities issued by a closed-end fund or unit investment trust could avail itself of the exemption for new issues in a firm commitment underwriting under Rule 15c6–1(b). Thus, the new issue exemption would cover underwritings of closed-end funds and unit investment trusts but not open-end funds.

The Commission believes it is appropriate to include mutual fund transactions because mutual fund shares represent a significant and growing percentage of a broker-dealer's transactions. Even though some mutual fund shares may represent diversified portfolios, contracts for the purchase and sale of these securities pose many of the same systemic, market, and credit risk concerns as other securities subject to Rule 15c6–1, and in the event of a broker-dealer insolvency, these contracts will also need to be resolved. In addition, many, if not most, mutual fund purchases and redemptions are now processed through the centralized "FUND SERV" system operated by NSCC.[59] Although NSCC does not formally guarantee performance on contracts cleared in the "FUND SERV" service, its central role, coupled with potential changes to payment settlement timeframes, suggests that reducing the "FUND SERV" settlement timeframe to three business days would significantly reduce risk to the national clearance and settlement system.

Several commentators expressed concern that shortening the timeframe for redemptions by two business days would create liquidity concerns in the event of unexpectedly high volumes of redemptions. The commentators noted that although mutual funds generally meet redemption requests from cash on hand, a particularly large volume of redemption requests would require mutual funds to sell securities from their portfolios. The commentators maintain that application of the T+3 settlement requirement under these circumstances could be problematic, particularly for mutual funds with portfolios heavily invested in securities not subject to T+3 settlement.

The Commission shares commentator concern about the potential for redemptions to create a liquidity crisis, but believes several factors mitigate these concerns. First, the Commission expects that mutual fund managers will account for the risk of a liquidity crisis in planning their portfolio investments. Second, the Commission is delaying the effective date of Rule 15c6–1 by more than nineteen months, which should permit fund managers sufficient time to identify potential exposures and take appropriate remedial steps. Third, the primary components of mutual fund portfolio assets should, by June 1, 1995, settle within three business days of the date of the trade (including U.S. government, corporate equity and debt, and municipal securities). Indeed, as discussed above, the Commission expects the MSRB will act to implement T+3 settlement for municipal securities by June 1, 1995, consistent with Rule 15c6–1. Finally, the Commission will retain authority to exempt, by order, specific trades or classes of trades from the requirement of Rule 15c6–1.

Several commentators raised concerns about whether application of Rule 15c6–1 would be consistent with obligations and requirements under section 22(e)[60] of the Investment Company Act of 1940 ("1940 Act") and section 11(d)(1) of the 1934 Act.[61] Section 22(e) generally provides that investment companies may not suspend the right of redemption, or postpone payment or satisfaction upon redemption of any redeemable security for more than seven days after tender of the security being redeemed, except under certain circumstances.

The Commission believes that the primary purpose of the seven day period prescribed in section 22(e) is to set forth an outside limit on the amount of time that an investment company may take to satisfy a redeeming shareholder's request for payment. Further, the Commission believes that the underlying rationale of section 22(e) is to ensure that "redeemable" securities are, in fact, redeemable, and that that rationale does not conflict with the purposes of Rule 15c6–1.[62] Moreover, industry practice regarding the settlement timeframe for securities transactions, including transactions in mutual funds, has fluctuated since the enactment of the 1940 Act. Accordingly, while the commentators may contend that the seven-day period provided by section 22(e) is analogous to the current industry convention of effecting settlement on the fifth business day following trade date, the fact that those periods are the same today is merely fortuitous.

Section 11(d)(1) generally prohibits a person that acts as both a broker and a dealer from extending credit to a customer to allow that customer to purchase securities issued by a mutual fund. The Commission preliminarily believes these requirements should not be an obstacle to reducing the settlement timeframe for trades in mutual fund shares. At the time these requirements were enacted, the settlement timeframe was T+2. Commentators have discussed with the Commission staff the potential

[57] The Investment Company Act of 1940 ("1940 Act"), 15 U.S.C. 80a–1, describes several forms of investment companies. Among these are "open-end" and "closed-end" management companies and unit investment trusts. Sections 4, 5, 1940 Act; 15 U.S.C. 80a–4, 80a–5. Open-end companies, commonly known as mutual funds, offer redeemable securities. Unit investment trusts also issue redeemable securities, although their sponsors generally create a secondary market for their shares. Closed-end companies resemble corporations in that at any time they have a fixed number of shares outstanding that are traded on an exchange or in the over-the-counter market at prices which reflect supply and demand.

[58] See Proposing Release, at note 33.

[59] The Mutual Fund Settlement, Entry, and Registration Service ("Fund/Serv") was implemented in 1986 to enable NSCC members to submit mutual fund purchase and redemption orders to NSCC, and to enable NSCC in turn to transmit the orders to its members acting on behalf of eligible mutual funds.

[60] 15 U.S.C. 80a–22(e).

[61] 15 U.S.C. 78k(d)(1).

[62] The legislative history of section 22(e), although sparse, indicates the significant importance placed on an open-end investment company shareholder's right to redeem shares, "and receive at once, or within a very short time, the approximate cash asset value of such shares as of the time of the tender." See Hearings Before a Subcomm. of the Comm. on Banking and Currency on S. 3580, 76th Cong., 3d Sess. (1940), at 985. The Commission believes that the wording of section 22(e)—"No registered investment company * * * shall * * * postpone the date of payment or satisfaction upon redemption of any redeemable security * * * for more than seven days after the tender of such security"—clearly suggests that the section is intended to be a "limit" rather than a "grant."

application of these provisions and the staff expect to address these concerns before June 1, 1995.

5. Mortgage-Backed Securities

As proposed in February 1993, private-label mortgage backed securities ("MBS")[63] would fall within the ambit of Rule 15c6–1. The Rule would not, however, apply to those MBSs issued by government agencies and government sponsored enterprises ("GSE").[64] In the Proposing Release, the Commission invited commentators to consider whether adopting a T+3 settlement timeframe would cause difficulties for issuers and investors in the MBS market and to consider generally whether additional safeguards relating to clearance and settlement of MBSs would be appropriate.

The commentators generally were supportive of applying the proposed Rule to MBSs. Some of the commentators stated that the Rule should apply to MBSs issued by government agencies and GSEs as well as to private-label collateralized mortgage obligations ("CMO"). The PSA stated that although it would prefer that all MBSs settle on the same basis, the bifurcation between private-label MBSs on the one hand, and government agency and GSE MBSs on the other, did not present an insurmountable barrier. The PSA stated that the larger firms probably would adopt a T+3 settlement standard for all MBSs, whether or not subject to the Rule.

Commentators identified several areas of concern with respect to MBSs. The first relates to the availability of factors,[65] and whether that could create a barrier for private-label MBSs to move to T+3. Transactions that are effected before the current month's factor is available must go through a cancel and correct procedure to ensure that the correct amount of principal and interest is attributed to the investor for that month. Shortening the settlement cycle could make it less likely that the current month's factor will be available for a given transaction, which would be reflected by more cancel and correct transactions.

The Commission notes, along with The PSA, that for private-label MBSs settling through DTC, DTC's CMO Trade Adjustment System[66] keeps track of trades settling with the previous month's factor and automatically adjusts those trades after the current factor is available. Over three-quarters of outstanding private-label CMOs are on deposit at DTC, and the CMO Trade Adjustment System is used regularly among participants.[67]

The Commission believes that trades in private-label CMOs should be included within the scope of Rule 15c6–1. First, although CMO trades could require some adjustments to reflect changing principal payments in underlying collateral, existing trade adjustment and reconciliation systems and practices appear adequate. Second, the potential for gridlock in the event of a major participant default[68] warrants the exchange of as much value as soon as possible in these markets, even if that means that some post-trade adjustment is necessary. This is even more important given the increasing complexity of CMO products, the absence of transparent markets for establishing fair value, and concern about the liquidity of CMO markets in the event of a major market event.

Commentators also expressed concern about how contracts for purchase or sale of mortgage pass-throughs in the to-be-announced ("TBA") market would be treated under Rule 15c6–1. Trading in this market occurs without providing specific mortgage pool information. Among other things, TBA trading allows an underwriter of a private-label mortgage pass-through security to acquire the financing necessary to assemble the pool of mortgages that will comprise a given mortgage pass-through security.[69] In response to those concerns, the Commission will interpret Rule 15c6–1 to require that settlement of mortgage pass-through securities occur within three days after a specific pool is identified for delivery under the contract. Under current TBA market conventions, as specified in PSA Guidelines,[70] firms must designate specific pools allocated to a TBA transaction at least 48 hours before settlement.[71] Firms following this convention will be deemed to comply with Rule 15c6–1.

In summary, all private-label MBSs shall be subject to the T+3 settlement requirement. TBA trades will not be subject to the Rule; instead, once a pool is designated, settlement must occur within three days. New issuances of CMOs that are the subject of a firm commitment underwriting will be subject to the settlement timeframe applicable to other initial issuances as provided in Rule 15c6–1(b).

B. Ability of Broker-Dealers to Override T+3 Settlement

As proposed, Rule 15c6–1 provides that, unless otherwise expressly agreed by the parties at the time of the transaction, a broker or dealer is prohibited from entering into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptance, or commercial bill) that provides for payment of funds and delivery of securities later than T+3. As described above, the proposed Rule allows a broker or dealer to agree that settlement will take place in more than three business days, when the agreement is express and reached at the time of the transaction.

Several letters from individual commentators and approximately 1,550 substantially similar letters expressed concern that the ability to override the three day settlement requirement could create a market inefficiency that could be exploited by some broker-dealers. Those commentators suggested that the ability of broker-dealers to override the three day settlement requirement for specific transactions will permit broker-dealers to establish two classes of investors, providing advantages to investors holding with the broker-dealer

[63] MBSs include mortgage pass through securities, collateralized mortgage obligations ("CMO"), and Real Estate Mortgage Investment Conduits ("REMIC"). Private-label MBSs include privately issued MBSs collateralized by agency or government sponsored enterprise mortgages or mortgage pass through securities.

[64] Government agencies include, for example, the Government National Mortgage Association ("Ginnie Mae"). GSEs include, without limitation, the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").

[65] A factor is the proportion of outstanding principal to the original principal balance, expressed as a decimal. In the case of CMOs and REMICs, factors are made available once a month, and in the case of private-label MBSs, this occurs at the end of the month.

[66] See Securities Exchange Act Release No. 30277 (January 22, 1992), 57 FR 3657 (order approving DTC's CMO Trade Adjustment System).

[67] Telephone conversation with James Riley, Planning Department, DTC, and Patricia Trainor, Associate Counsel, DTC (August 23, 1993).

[68] See *e.g.*, testimony concerning the bankruptcy of Drexel.

[69] Mortgage pass-through securities have been traded for many years and frequently are the collateral from which CMOs and REMICs are created. For a description of this market, *see e.g.*, Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266 (granting the Participants Trust Company temporary registration as a clearing agency).

[70] PSA, Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities 8.B.1 (1992).

[71] Forward trades are done typically on a TBA basis because certain specifics, such as the pool numbers, are not available at the time of the trade and are typically provided 48 hours before settlement to allow for the smooth settlement of the pass-through security. Letter from Dominick F. Antonelli, Chairman, PSA Municipal Securities Division Operations and Compliance Committee, and Stephen W. Hopkins, Chairman, PSA Mortgage Securities Division Operations Committee, to Jonathan G. Katz, Secretary, Commission (July 8, 1993).

in indirect or beneficial ownership form over those investors choosing to own shares of stock in direct ownership form.

Several commentators suggested eliminating from the Rule the ability to override the three day settlement requirement. The large majority of the letters, however, did not suggest eliminating the override provision, but rather encouraged the Commission to ensure that broker-dealers do not use the override provision to discourage direct forms of securities ownership.

The override provision was intended to apply only to unusual transactions, such as seller's option trades, that typically settle as many as sixty days after execution as specified by the parties to the trade at execution. It was not intended to permit broker-dealers to specify before execution of specific trades that a group of trades will settle in a timeframe other than T+3. In general, broker-dealers will not be able to contract out of the three day settlement timeframe.

The Commission supports industry efforts to develop products which will enhance the ability of retail investors to choose among suitable forms of ownership. The Commission, moreover, intends for the choice of securities ownership to be driven by market forces, and not for the override provision of Rule 15c6–1 to be used by market participants to prefer one form of ownership over another. The Commission will continue to monitor the use of the override provision of Rule 15c6–1, and, if such abuses are detected, will consider additional rulemaking.

IV. Competition Findings

Section 23(a)(2) of the 1934 Act[72] requires the Commission, in adopting rules under the 1934 Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the 1934 Act. Several commentators, primarily small retail broker-dealers, raised concerns that Rule 15c6–1 would increase their costs, thereby making it more difficult to compete with larger broker-dealers. The Commission notes that Rule 15c6–1 does not distinguish between categories of broker-dealers, and believes that the costs created would be imposed evenly upon larger and smaller broker-dealer firms. The costs may be higher for certain firms, regardless of their size, that have not invested in necessary infrastructure and technology.[73] These costs would be necessary in assuring that the purpose of the Rule, risk reduction, is met. The Commission has considered Rule 15c6–1 in light of the standard cited in section 23(a)(2) and believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the 1934 Act.

V. Conclusion

The Commission believes that Rule 15c6–1 will reduce credit and liquidity risks, reduce the settlement gap between the corporate securities market and the government securities and derivatives markets, and increase efficiency in broker-dealer and clearing agency operations. Some broker-dealers currently have the operational capability to comply with three-day settlement. However, where a broker-dealer's procedures currently are not designed to accommodate three-day settlement, the facilities to expedite the settlement process do exist (*e.g.*, bank wire systems or overnight postal courier services). The Commission believes that broker-dealers and their customers can make the necessary systems and operational changes to comply with three-day settlement given the extended transition period for implementation of the Rule. The Commission recognizes, however, that the extent and nature of modifications depends on the specific needs of each firm. Nevertheless, the Commission recommends that, as necessary, industry participants that need to make significant systems or operational changes evaluate their progress periodically as the implementation date for T+3 approaches and make adjustments as appropriate to ensure a smooth transition to T+3 settlement.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA") regarding Rule 15c6–1, in accordance with 5 U.S.C. 604. The FRFA notes the potential costs of operational and procedural changes that may be necessary to comply with the Rule. In addition, the FRFA notes the importance of the risk reduction that will result from a shorter settlement cycle. The Commission believes that the benefits of Rule 15c6–1 outweigh the costs that will be incurred by industry participants in complying with the Rule.

A copy of the FRFA may be obtained by contacting Christine Sibille, Attorney, Branch of Debt and International Clearing Agency Regulation, Office of Securities Processing Regulation, Division of Market Regulation, Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions (Government organizations).

17 CFR Part 240

Brokers and dealers, Registration and regulation, Securities.

Text of the Amendments

In accordance with the foregoing, title 17 chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 200.30–3 is amended by adding paragraph (a)(55) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(55) Pursuant to § 240.15c6–1 of this chapter, taking into account then existing market practices, to exempt contracts for the purchase or sale of any securities from the requirements of § 240.15c6–1(a) of this chapter.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c6–1 is added to read as follows:

[72] 15 U.S.C. 78w(a)(2).

[73] These broker-dealers, however, are not subject to a unique cost. Instead, they are incurring a cost previously paid by their competitors.

§ 240.15c6–1 Settlement cycle.

(a) Except as provided in paragraph (b) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraph (a) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the sale for cash of securities by an issuer to an underwriter pursuant to a firm commitment offering registered under the Securities Act of 1933, or the sale to an initial purchaser by a broker-dealer participating in such offering; or

(3) For the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

Dated: October 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices 1 through 3 to the preamble will not appear in the Code of Federal Regulations.

Appendix 1—List of Commentators

The following commentators submitted comments relating to proposed Rule 15c6–1.

Government Agency

Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board")

Self-Regulatory Organizations

Boston Stock Exchange ("BSE")
Chicago Mercantile Exchange ("CME")
The Depository Trust Company ("DTC")
Government Securities Clearing Corporation ("GSCC")
International Securities Clearing Corporation ("ISCC")
Midwest Clearing Corporation/Midwest Securities Trust Company ("CHX")
Municipal Securities Rulemaking Board ("MSRB")
National Securities Clearing Corporation ("NSCC") New York Stock Exchange ("NYSE")
The Options Clearing Corporation ("OCC")

Trade Associations

American Bankers Association ("American Bankers")
American Bar Association Section of Business Law, Subcommittee on Market Regulation and Subcommittee on Registration Statements, 1933 Act of the Committee on Federal Regulation of Securities ("American Bar Association")
American Council of Life Insurance ("American Council")
American Society of Corporate Secretaries, Inc. ("Corporate Secretaries")
Association of Reserve City Bankers ("Reserve City Bankers")
The Cashiers' Association of Wall Street, Inc. ("Cashiers' Association")
Corporate Transfer Agents Association, Inc. ("CTAA")
Data Management Division of Wall Street (Securities Industry Association) ("Data Management Division")
Investment Company Institute ("ICI")
National Association of Securities Dealers, Inc. ("NASD")
National Automated Clearing House Association ("NACHA")
New York Clearing House ("NYCH")
Public Securities Association ("PSA")
Regional Municipal Operations Association ("RMOA")
Securities Industry Association ("SIA")
Securities Operations Division of the SIA ("SOD")
Security Traders Association ("Traders Association")
The Securities Transfer Association, Inc. ("STA")
Syndicate Operations Association Incorporated ("SOA")

Broker-Dealers

A.G. Edwards & Sons, Inc. ("A.G. Edwards")
Alex. Brown & Sons Incorporated ("Alex Brown")
Arthurs Lestrange & Company Incorporated ("Arthurs Lestrange")
Asiel & Co. ("Asiel")
Robert W. Baird & Co. Incorporated ("Baird")
Baker & Co., Incorporated ("Baker")
Bear Stearns & Co., Inc. ("Bear Stearns")
Bodell Overcash Anderson & Co., Inc. ("Bodell Overcash")
Jack V. Butterfield Investment Company ("Butterfield")
J.W. Charles Securities, Inc. (4 letters) ("J.W. Charles")
Chatfield Dean & Co., Inc. ("Chatfield")
Cheevers, Hand & Angeline, Inc. ("Cheevers")
The Chicago Corporation ("Chicago Corporation")
Collopy & Company Inc. ("Collopy")
Consolidated Financial Investments, Inc. ("Consolidated")
CUSO Equities, Inc. ("CUSO")
Cygnet Resources, Inc. ("Cygnet")
D.A. Davidson & Co. ("Davidson")
Davenport & Co. of Virginia, Inc. ("Davenport")
Dean Witter Reynolds, Inc. ("Dean Witter")
J.V. Delaney & Associates ("Delaney")
Dempsey & Company ("Dempsey")
H.C. Denison Co. ("Denison")
Dorsey & Company, Incorporated ("Dorsey")
East/West Securities Co. ("East/West")
Ferris, Baker Watts, Incorporated ("Ferris Baker")
Fidelity Investments Institutional Services Company, Inc. ("Fidelity")
Financial Network Investment Corporation ("Financial Network")
John Finn & Company, Inc. ("John Finn")
The First Boston Corporation ("First Boston")
First Dallas Securities Incorporated ("First Dallas")
First Manhattan Co. ("First Manhattan")
First Northeast Securities, Inc. ("First Northeast")
Gilbert Marshall & Company ("Gilbert")
Goldman, Sachs & Co. ("Goldman Sachs")
Grove Securities, Inc. ("Grove")
Gruntal & Co. Incorporated ("Gruntal")
G–W Brokerage Group, Inc. ("G–W")
Hamilton & Company Incorporated ("Hamilton")
The Heitner Corporation ("Heitner")
Hopper Securities-Vermont ("Hopper")
Wayne Hummer & Co. ("Hummer")
Interstate/Johnson Lane Corporation ("Interstate/Johnson Lane")
Raymond James & Associates, Inc. (2 letters) ("Raymond James")
Kenneth Jerome & Company ("Jerome")
JJC Specialist Corp. ("JJC")
Edward D. Jones & Co. ("E.D. Jones")
Juran & Moody, Inc. ("Juran & Moody")
Kidder, Peabody & Co., Incorporated (2 letters) ("Kidder")
Kirk Securities Corporation ("Kirk")
La Branche & Co. ("LaBranche")
Legg Mason Wood Walker, Incorporated ("Legg Mason")
Lewco Securities Corp. ("Lewco")
Locust Street Securities, Inc. ("Locust")
McCourtney-Breckenridge & Company ("McCourtney")
M.E. Metzler Organization, Incorporated ("M.E. Metzler")
Merchant Capital Corporation ("Merchant Capital")
Mericka & Co., Inc. ("Mericka")
Meridian Associates, Inc. ("Meridian")
Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch")
Miller & Schroeder Financial, Inc. ("Miller")
Montgomery Securities ("Montgomery")
Morton Seidel & Co., Inc. ("Morton Seidel")
Mutual Service Corporation ("Mutual")
Nicodemus & Sherwood, Inc. ("Nicodemus")
Northern Trust Securities, Inc. ("Northern Trust")
Paine Webber Incorporated ("Paine Webber")
Paulson Investment Company Inc. ("Paulson")
Pershing Division of Donaldson, Lufkin and Jenrette Securities Corporation ("Pershing")
Peterson Financial Corp. ("Peterson")
Pflueger & Baerwald Inc. ("Pflueger")
Piper Jaffray Companies Inc. ("Piper Jaffray")
Pirrone & Co., Inc. ("Pirrone")
Robert A. Podesta & Co. ("Podesta")
The Principal/Eppler, Guerin & Turner, Inc. ("Principal Financial")
Protective Group Securities Corporation ("Protective")

Prudential Securities Incorporated ("Prudential")
Quick & Reilly, Inc. ("Quick & Reilly")
Quincy Cass Associates Incorporated ("Quincy")
Richards, Merrill & Peterson, Inc. ("Richards Merrill")
Robinson & Lukens, Inc. ("Robinson Lukens")
Rodgers Capital Corporation ("Rodgers")
Roland Francis & Co., Inc. ("Roland Francis")
Sands Brothers & Co., Ltd. ("Sands Bros.")
Saperston Financial Inc. ("Saperston")
Charles Schwab & Co., Inc. ("Schwab")
S.C. Parker & Co., Inc. (3 letters) ("S.C. Parker")
Janney Montgomery Scott Inc. ("Montgomery Scott")
Scott & Stringfellow Investment Corp. ("Scott Stringfellow")
Selected Securities Company ("Selected")
Sierra Trading ("Sierra Trading")
Smith, Moore & Co. ("Smith Moore")
Southwest Securities Incorporated ("Southwest")
Summitt Investment Corporation ("Summitt")
Robert Thomas Securities, Inc. ("Robert Thomas")
Robertson, Stephens & Company ("Robertson Stephens")
The Warner Group Inc. ("Warner")
U.S. Clearing Corp. ("U.S. Clearing")
Wheat, First Securities, Inc. ("Wheat First")
William J. Conway & Co., Inc. ("Conway")
Wulff, Hansen & Co. ("Wulff Hansen")
Wyoming Financial Securities, Inc. ("Wyoming")
B.C. Ziegler and Company ("B.C. Ziegler")
Ziegler Thrift Trading, Inc. ("Ziegler Thrift")

Investment Advisors

Jobel Financial, Inc. ("Jobel")
Massachusetts Financial Services Company ("Massachusetts Financial")
Neuberger & Berman ("Neuberger")
Oppenheimer Management Corporation ("Oppenheimer Management")
Seger-Elvekrog, Inc. ("Seger-Elvekrog")
Society National Bank ("Society")
St. Denis J. Villere & Company ("St. Denis")
Stephenson and Company ("Stephenson")

Bank Custodians

Bank of America National Trust and Savings Association ("Bank of America")
The Chase Manhattan Bank, N.A. ("Chase")
Citibank, N.A. ("Citibank")
Morgan Guaranty Trust Company of New York ("Morgan Guaranty")
United States Trust Company of New York ("U.S. Trust")
Wachovia Trust Services, Inc. ("Wachovia")

Insurance Company-Affiliated Broker-Dealers

Green Hill Financial Service Corp. ("Green Hill")
MML Investors Services, Inc. ("MML")
Sun Investment Services Company ("Sun")

Limited Partnerships Broker-Dealer

Chicago Partnership Board, Inc. ("Chicago Partnership Board")

Mutual Fund Broker-Dealers

Chubb Securities Corporation ("Chubb")
Penn Square Management Corporation ("Penn Square")
H.D. Vest Investment Securities, Inc. ("H.D. Vest")

Municipal Bond Broker-Dealers

Clayton Brown & Associates, Inc. ("Clayton Brown")
Halpert and Company, Inc. ("Halpert")
Hanifen, Imhoff Inc. ("Hanifen")
The Leedy Corporation ("Leedy")

Transfer Agents

Burnham Pacific Properties, Inc. ("Burnham")
Chemical Banking Corporation ("Chemical")
Fidelity Accounting & Custody Services Company ("FACS")
Morgan Stanley & Co. Incorporated ("Morgan")
Oppenheimer Shareholder Services Division of Oppenheimer Management Corporation (2 letters) ("Oppenheimer Shareholder")
State Street Bank and Trust Company ("State Street")
Southern Company Services, Inc. ("Southern")
Texaco Inc. ("Texaco")
Valero Energy Corporation ("Valero")
Wisconsin Energy Corporation ("Wisconsin")

Individuals

Scott G. Abbey
John W. Bachmann
Dr. & Mrs. L.O. Banks
Rodney E. Bate
Chris Bennett
Nelda Bergsten
Russell M. Bimber
Helen A. Bird
Allan R. Black
Weston A. Boyd
Carl R. Brasee
D.N. Bulla
Mark C. Bublak
Thomas A. Byrne
D.H. Carlson
John Cirrito
Daniel B. Coleman
Richard Conway
Douglas Czarnecki
Martin H. Drayer
Karen Frye
Gordon G. Garney
Elaine Graham
Rae T. Gaida
Professor Steven Hill
Donald R. Hollis
Frank Hutcheon
Mark Jackson
Rex and Susan Jacobsen
Kenneth S. Janke
Marilyn D. Jennings
James A. Jephcote
William P. Kilroy
David M. Klausmeyer
Donald R. Kryzan
Robert T. Levine
Lowell H. Listrom
Pearl Lurie
Ina Mandel
Joseph J.F. March
George J. Minnig
Stephen A. Molasky
H.J. Porter
Mani K. Pulimood
Richard R. Romane
Donald Rhyne
Michael A. Rogawski
Ramona B. Schafehen
Charles F. Schlein, Jr.
D. Schroeder
Kenneth Shazel
Hank Simon
Richard B. Smith
George Sneed
Murray L. Solomon
Walter Stelma
Frank C. Vogel
Robert C. Waldo, Jr.
Warren D. Weber
Martin J. Webler
Barbara Wilkinson
Theo L. Wealinsh
Daniel P. Worth

Insurance Company

Aetna

Other

Armstrong World Industries, Inc.
William Batdorf & Company, Certified Public Accountants
BellSouth Corporation ("BellSouth")
Bryan Cave
The College Retirement Equities Fund ("CREF")
DQE
E.F. Miller & Company ("E.F. Miller")
Federal Reserve Bank of New York ("FRBNY")
The Group of Thirty ("Group of Thirty")
Minnesota Utility Investors ("MUI")
Sixty Niner Investment Club ("Sixty Niner")
Texas Industries, Inc. ("Texas Industries")
Thomson Financial Services ("Thomson")

In addition, the Commission received substantially similar letters from three separate groups, as set out below.

Individual Investors

1,550 identical letters supporting direct registration

Regional Investment Brokers, Inc. ("RIBS") Letters ("RIBS Letters")

[101 letters opposing T+3 settlement]

Century Capital Corp. of South Carolina ("Century")
Corporate Securities Group, Inc. (16 letters) ("Corporate Securities")
Culverwell & Co., Inc. (5 letters) ("Culverwell")
Girard Securities, Inc. ("Girard")
Greenway Capital Corporation ("Greenway")
Investors Associates, Incorporated ("Investors Associates")
La Jolla Capital Corporation ("LaJolla")
M.H. Meyerson & Co., Inc. ("Meyerson")
Royce Investment Group, Inc. ("Royce")
RIBS
Royce Employees (69 letters)
Sentra Securities Corporation ("Sentra")
Spellman & Company, Inc. ("Spellman")
Wilson-Davis & Company Incorporated ("Wilson Davis")

Transfer Agent Letters

17 letters supporting T+3 settlement

The Bank of New York ("BONY")
Barnett Banks, Inc. ("Barnett")
CBI Industries Inc. ("CBI")
CEL-SCI Corporation ("CEL-SCI")

Central and South West Corporation ("Central")
E.I. du Pont de Nemours and Company ("DuPont")
Nevada Power Company ("Nevada Power")
First Chicago Trust Company of New York ("First Chicago")
Florida Progress Corporation ("Florida Progress")
GenCorp
Mellon Financial Services Corporation No. 17 ("Mellon")
Northern States Power Company ("Northern States")
Northwest Natural Gas Company ("Northwest")
Ottertail Power Company ("Ottertail")
Society National Bank ("Society National")
WPL Holdings, Inc.
Union Data Service Center, Inc. ("Union Data")

Appendix 2—Recent Initiatives in Clearance and Settlement Reform

Although the U.S. clearance and settlement system is among the safest in the world, recent events have demonstrated that vulnerabilities exist. Record volume and volatility during October 1987 proved detrimental to broker-dealers who were unable to resolve processing errors before settlement with their customers on T+5. Moreover, the steep decline in stock prices during that period, as well as the decline on October 16, 1989, left some broker-dealers vulnerable to loss from the positions of customers who were unable or unwilling to meet either margin calls or transaction settlement obligations. This in turn called into question the ability of those broker-dealers to meet their obligations to the clearing corporations.[1]

After the October 1987 market break, several groups sought to identify causes of the market decline and changes that could be made to shield market participants from the impact of sudden steep declines in the market.[2] All these studies identified clearance and settlement as an area which needed further attention.[3]

At the same time, in March 1988, the Group of Thirty[4] organized a symposium in London to discuss the state of clearance and settlement in the world's principal securities markets. The symposium participants concluded that there was a need for international agreement on a uniform set of practices and standards for the clearance and settlement of securities transactions in order to improve the process. In light of this conclusion, the Group of Thirty organized a Steering Committee to work with a professional and broad-based Working Committee in order to produce a set of operational proposals for practices and standards in the area of clearance and settlement.

In March 1989, the Group of Thirty issued a report by the Steering Committee setting forth nine recommendations ("Group of Thirty recommendations"),[5] including implementation of settlement on T+3, to modernize and improve clearance and settlement systems at a local level and to make them compatible with each other internationally.[6] Following the release of the Group of Thirty Report, several countries initiated separate efforts to study how their clearance and settlement systems compared with the Group of Thirty recommendations. In the U.S., a Working Group was created for this purpose. The U.S. Working Group concluded that, while the U.S. was in compliance with seven of the Group of Thirty recommendations, continued consideration should be given to the implementation of the two remaining recommendations, T+3 settlement and settlement in same-day funds.[7]

Two subcommittees, a U.S. Steering Committee and a U.S. Working Committee of the Group of Thirty ("the U.S. committees") were formed to evaluate the benefits of shortening the settlement cycle and converting to the use of same-day funds. The U.S. committees urged adoption of the two recommendations and, in order to support a move to T+3 settlement, also recommended that: (1) Book-entry settlement be mandatory for transactions between financial intermediaries and between financial intermediaries and their institutional customers;[8] and (2) all new securities issues should be made eligible for depository services.

In November 1990, the Commission held a Roundtable to discuss the recommendations of the U.S. committees. Roundtable participants generally agreed that the two recommendations should be adopted, but urged that the timetables for implementation be sufficiently flexible so that obstacles to implementation could be fully explored and practical solutions found and implemented. Roundtable participants expressed concern that broker-dealers conducting a predominantly retail business might have difficulty operating in a three business day settlement timeframe in the national clearance and settlement system because of the need, among other things, to obtain payment from retail clients for purchase transactions.

Following the Commission's Roundtable, former SEC Chairman Richard Breeden asked Howard Shallcross, Director of Operations, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), to form a committee to examine how retail firms and their customers could best be accommodated in a T+3 settlement environment and to report the committee's findings to the Commission. The committee was asked specifically to determine how to solve the problem of timely payments for retail purchase transactions as well as any other retail issues that it considered appropriate. The Shallcross Committee prepared a draft report that recommended alternative risk reduction proposals, such as marking unsettled securities transactions to the market beginning on T+1.[9] Subsequently, former Chairman Breeden asked the U.S. Steering Committee of the Group of Thirty to form a task force, chaired by John W. Bachmann, Managing Principal, Edward D. Jones & Co., to review what changes to the clearance and settlement system were

[1] See Division of Market Regulation, Commission, The October 1987 Market Break Chapter 10 at 20–21 ("Market Break Report").

[2] *Id.* See also Working Group on Financial Markets, Interim Report to the President of the United States (May 1988) (Appendix D) (the Working Group is chaired by the Secretary of the Treasury and its members include the Chairmen of the SEC, the Commodity Futures Trading Commission, and the Board of Governors of the Federal Reserve System); Presidential Task Force on Market Mechanisms, Report to the President of the United States (January 1988) (the so-called "Brady Report"); and General Accounting Office, Preliminary Observations on the October 1987 Crash (January 1988).

[3] Since 1987, considerable progress has been made toward increasing clearing corporations' capabilities to handle large volumes of trades and manage financial risk. Examples include increases in the number of cross margining facilities sponsored by The Options Clearing Corporation ("OCC") and commodity clearing organizations, expansion of the depository system to include new financial products such as commercial paper, and development of extensive lines of communication between banking, securities, and commodities organizations.

[4] The Group of Thirty, established in 1978, is an independent, non-partisan, non-profit organization composed of international financial leaders whose focus is on international economic and financial issues.

[5] See Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989) ("Group of Thirty Report").

[6] These recommendations were: (1) By 1990, trade comparison between direct market participants should occur by the day following the date of trade execution; (2) by 1992, indirect market participants should be members of a trade comparison system which achieves positive affirmation of trade details; (3) by 1992, each country should have an effective and fully developed central securities depository; (4) by 1992, if appropriate, each country should implement a netting system; (5) by 1992, a delivery versus payment system should be employed as the method for settling all securities transactions; (6) countries should adopt a same-day funds payment method for settlement of securities transactions; (7) a rolling settlement system should be adopted by all markets as follows: (a) by 1990, final settlement should occur on the fifth day after the date of trade execution, (b) by 1992, final settlement should occur on the third day after the date of execution; (8) securities lending and borrowing should be encouraged as a method of expediting the settlement of securities transactions; and (9) by 1992, each country should adopt the standards for securities numbering and messages developed by the International Standards Organization.

[7] "Same-day funds" refers to payment in funds that are available on payment date and generally are transferred by electronic means.

[8] On June 11, 1993, the Commission approved a proposed rule change filed by the securities exchanges and the National Association of Securities Dealers ("NASD") that requires members, member organizations, or affiliated members of the securities exchanges and the NASD to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary (broker, dealer, or bank). In addition, the rule prohibits members, member organizations, or affiliated members of the SROs from effecting a delivery-versus-payment ("DVP") or receipt-versus-payment ("RVP") transaction in a depository eligible security with an institutional customer unless the transaction is settled by book-entry using the facilities of a securities depository. Securities Exchange Act Release No. 32455 (June 11, 1993), 58 FR 33679.

[9] Shallcross Committee, Impact of T+3 Migration on the Retail Sector A Preface to the Interim Report to the SEC (March 20, 1991).

necessary, to identify practical solutions, and to propose a reasonable timeframe for implementation of each of those solutions.[10] The Bachmann Task Force[11] ("Task Force") undertook that challenge, identifying many of the issues that would confront retail broker-dealers in a T+3 settlement environment and proposing solutions and timetables for resolving those issues.

In May 1992, the Task Force presented its findings and recommendations to the Commission.[12] Among other things, the Task Force concluded that "time equals risk" and that the settlement cycle for corporate and municipal securities should be compressed to T+3.[13] The Task Force also evaluated the principal suggestion of the Shallcross Committee, *i.e.*, that unsettled trades should be marked-to-the-market. The Task Force produced a quantitative analysis that showed that shortening the settlement cycle to T+3 would result in greater risk reduction than a daily mark-to-market without a shortened settlement cycle.[14] The Task Force concluded that compared with T+5 settlement, T+3 settlement would result in a 58% reduction in risk to National Securities Clearing Corporation ("NSCC")[15] in the event of the failure of an average large clearing member. The Task Force's data further showed that NSCC's average expected exposure in a T+5 settlement period with a daily mark-to-market would be 30% higher than its exposure in a T+3 settlement period without a daily mark-to-market.

On June 22, 1992, the Commission published the Task Force Report in the **Federal Register** for public comment.[16] The Commission received over 1,000 comment letters from banks, broker-dealers, investment advisors, trade associations, clearing agencies, exchanges, transfer agents, and individual investors. Although many of these commentators expressed concern about the potential loss of access to physical certificates,[17] in large part they were supportive.

The Commission agrees with the Task Force conclusion that "time equals risk." Based on that analysis and recent events demonstrating that vulnerabilities still exist in the U.S. clearance and settlement system, the Commission believes that it is prudent to shorten the time that unsettled trades remain outstanding.

Appendix 3—Building Blocks

A. Industry and SRO Initiatives

1. Interactive Institutional Delivery ("ID") Process

Moving settlement to T+3 requires that the affirmation[1] process be completed on T+1. Early affirmation of institutional trades can be accomplished by enhancing DTC's existing batch processing ID system to permit DTC to process information on receipt and distribute reports on request.

Commentators consider DTC's interactive ID system a critical building block to successful implementation of Rule 15c6–1. Twenty-one of the 101 commentators that support the proposed Rule express the need for early affirmation of institutional trades. These commentators believe that DTC's proposed interactive system will allow participants to be highly interactive, allowing completion of the confirmation/affirmation process on T+1, rather than on T+2 or T+3 as is the case in DTC's current batch processing ID system. One trade association, one clearing broker-dealer, and two retail broker-dealers conditioned their support of the proposal on DTC's interactive ID system being fully operational prior to adoption of the proposed Rule. Those commentators believed that T+3 settlement was not possible if affirmation/confirmation was not completed by T+1. Finally, five opposing commentators stated that their opposition to the Rule was based in part on the need to implement first DTC's interactive ID system.

DTC is developing an enhanced ID system that would provide users with an interactive option and would unify the existing ID and International ID systems. DTC expects to offer the interactive system to ID users in early 1994.[2] System users will be able to use the system either in the present batch environment or interactively, with the capability to accomplish all ID processing within a single business day. DTC plans to implement the enhanced system in stages. The proposed system includes a Standing Instructions Database ("SID"), to be implemented in late 1993;[3] an Electronic Mail feature, to be implemented in late 1993 or early 1994;[4] a "matching" system, to be implemented in mid-1994;[5] and an Authorization/Exception Processing and Reporting feature to be implemented in mid-1994.[6]

DTC has filed a proposed rule change under Section 19 of the 1934 Act regarding the interactive ID system. Although the Commission generally supports DTC's efforts towards an interactive ID system, Commission staff will review the proposal for consistency with the purposes of the 1934 Act.

2. Revisions to the Automated Clearing House ("ACH") System

To address the problem of timely payments between a retail broker and its customer, broker-dealers should consider ACH[7] as one

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[10] Letter from Richard C. Breeden, Chairman, Commission, to Lewis W. Bernard, Chairman, U.S. Steering Committee, Group of Thirty (July 11, 1991).

[11] In addition to Mr. Bachmann, the members of the Task Force included: David M. Kelly, President and Chief Executive Officer, National Securities Clearing Corporation ("NSCC"); Richard G. Ketchum, Executive Vice President and Chief Operating Officer, NASD; John F. Lee, President, New York Clearing House; Gerard P. Lynch, Managing Director, Morgan Guaranty Trust Company of New York; James J. Mitchell, Senior Executive Vice President, Northern Trust Securities, Inc.; Richard J. Stream, Managing Director, Piper Jaffray Companies Inc.; and Arthur L. Thomas, Senior Vice President, Merrill Lynch.

[12] Bachmann Task Force, Report of the Bachmann Task Force on Clearance and Settlement in the U.S. Securities Markets (May 1992).

[13] The Task Force recommended that this be accomplished by July 1994. The Task Force made eight other recommendations that would facilitate settling securities transactions on T+3: Revising the Automated Clearing House ("ACH") system; requiring an interactive institutional delivery process; settling all transactions among financial intermediaries and their institutional customers in book-entry form only and in same-day funds; depository eligibility for new issues; monitoring flipping (*i.e.*, the sale of stock back to the underwriting syndicate during the new issue stabilization period); expanding cross-margining; streamlining the handling of physical certificates; and monitoring all market activity.

[14] Task Force Report at 34–39.

[15] NSCC is the largest U.S. clearing corporation and is registered as a clearing agency under Section 17A of the 1934 Act. NSCC, among other things, functions as a post-trade processing facility and as a guarantor of post-trade settlements. In the latter capacity, NSCC assumes the credit risk of fails to deliver and fails to receive by substituting itself as the contra party on the day after trade date. Trades that are not settled on settlement date are carried forward to the next settlement day as open obligations. NSCC seeks to protect against the financial risk of these open positions by obtaining contributions from its members to a pool of funds. Any sizable loss in liquidating the open commitments of a defaulting member essentially would be absorbed by all members.

[16] See Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812.

[17] Over 800 of the comment letters were from individual investors responding to the recommendation to streamline the handling of physical certificates. The letters indicate a belief that the Task Force recommendation to streamline the handling of physical certificates would result in the elimination of physical certificates and force investors to hold securities in street name. The Task Force did not propose eliminating physical certificates for those retail investors who choose to maintain their record of ownership in that form.

[1] Under standard practice, an affirmation serves as the institution's authorization to the custodian to deliver securities against payment by (or accept securities and release payment to) the broker-dealer. A confirmation differs from an affirmation in that confirmation reports must contain all the information required by Rule 10b–10. If the broker-dealer includes all the necessary data about the trade in the ID transmission, he can comply with the trade confirmation requirements of Securities Exchange Act Rule 10b–10. 17 CFR 240.10b–10 (1992).

[2] DTC, An Interactive Option for the Institutional Delivery System, Memorandum to Participants and Other ID Users (March 31, 1993).

[3] The SID feature will be a repository for customer account and settlement information such as customer name, agent and interested parties furnished by institutions, agents and broker-dealers. This SID will eliminate the need for the broker-dealer to maintain all such information in its internal records and to provide all such information each time that it enters trade data into the ID system. *See* File No. SR–DTC–93–07, at 3–5, describing the features of the interactive ID system.

[4] The Electronic Mail feature will eliminate the need to make telephone calls or send facsimile transmissions by enabling broker-dealers and institutions to send and receive details of an order execution, allocations of block trades, or requests for cancellation (if the institution disagrees with a confirmation that the institution has received through the ID system). *Id.*

[5] The enhanced ID system will match trade data received from the broker-dealer with the instructions received from the institution automatically with the results of the matching being reported through the distribution of various output reports to the broker-dealer, the agent, and the institution. *Id.*

[6] This feature will allow delivering parties to authorize settlement of unaffirmed trades of DTC-eligible securities on the settlement date and later. *Id.*

[7] ACH is a domestic electronic payment system operated under the direction of the National

alternative to physical checks for payment and collection of funds to and from customers.

Ten of the 100 commentators that supported the proposed Rule suggested that an electronic payment system that results in finality of payment would make T+3 settlement more practicable, particularly for retail transactions. Most of the commentators addressing this issue stated that ACH would be the desired method of payment if the securities and banking industries could reach a consensus on the necessary revisions to Regulation E and NACHA operating rules so that transactions executed through registered broker-dealers would not be subject to rescission. Four commentators conditioned their support of Rule 15c6–1 on the implementation of a payment system that achieves finality of payment. NACHA, although it was officially neutral on the general merits of proposed Rule 15c6–1, stated that in a three-day settlement environment, the industry would need a payment system such as ACH for retail transactions.[8] Five opposing commentators stated that one reason for their opposition was the lack of an electronic payments system that results in finality of payment, which was considered by those commentators as an essential building block for T+3 settlement.

Following publication of the Bachmann Task Force Report, NACHA proposed a rule amendment that would remove the sixty-day right of rescission for payments in connection with securities transactions. That proposal was defeated. On August 30, 1993, NACHA approved a rule amendment that requires a receiving depository financial institution to obtain a signed affidavit from a consumer when the consumer claims that a transaction to his or her account is unauthorized or that an authorization has been revoked.[9] With the affidavit process in place, a retail securities transaction can be processed through the ACH network as follows: (1) A consumer will purchase securities from his or her broker; (2) the broker will initiate a debit to the consumer's account through its bank; and (3) the debit will be effected against the consumer's account at his or her bank. The consumer claiming that a retail securities transaction was unauthorized or that the authorization for that entry had been revoked would go to his or her bank and sign an affidavit to that effect prior to the bank returning the transaction. Under NACHA rules, the consumer has fifteen days after the receiving depository financial institution sends or makes available to the consumer information pertaining to that debit entry to claim that a transaction was unauthorized or that the authorization was revoked. The receiving depository financial institution must return the rescinded transaction within sixty days of the original settlement date. This change modifies the current process for handling unauthorized transactions over the ACH network, making it consistent with the procedures in the check processing system.

The Commission understands that further changes may be imminent. For example, NACHA is considering modifying the rule change to establish a dollar limit on the mandatory affidavit request and to establish a definition of what constitutes a reasonable timeframe for the receiving depository financial institution to respond to a request from the originating depository financial institution for a copy of the affidavit.[10]

The Commission encourages banks, broker-dealers, clearing agencies, and securities industry representatives to continue to improve the ACH process. The Commission recognizes, however, that ACH represents one of several methods of effecting payments and, accordingly, encourages broker-dealers to pursue other ways to secure good funds on T+3, including wider use of asset management accounts.

3. Mandatory Depository Eligibility

Some commentators believe that T+3 settlement would be difficult to achieve without mandating depository eligibility for all securities. In connection with this, one commentator indicated that the cost of doing business in new issues would increase significantly unless mandatory depository eligibility is developed along with an automated means of tracking flipping.[11]

Nine commentators believed that depository eligibility should be mandatory for all new issues. Two retail broker-dealers indicated that they would not support adoption of the proposed Rule without mandatory depository eligibility. Data Management Division, while neutral on the overall merits of proposed Rule 15c6–1, stated that depository eligibility for all securities should be mandatory.[12] Three opposing commentators believed that all new issues should be depository eligible.

As a practical matter, according to DTC, 94% of all issues listed on the New York Stock Exchange and 99% of issues traded in the over-the-counter market on the National Association of Securities Dealers Automated Quotation System ("NASDAQ") are depository eligible.[13]

Representatives of SROs and the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty ("Legal and Regulatory Subgroup") are drafting a uniform SRO rule for depository eligibility for new issues. The uniform rule is intended to incorporate a depository eligibility requirement into a listing standard for each registered national securities exchange and into the eligibility requirements for NASDAQ. Because listing standards for each SRO differ and the manner in which those standards are set forth in their respective rules is not uniform, however, individual SROs will consider the appropriate means to adopt such a uniform depository eligibility requirement to their current listing standards when all SROs have agreed upon and developed a uniform rule. Although the rules, if approved, would not reach settlement of transactions in securities that are not listed on a national exchange or NASDAQ, the Commission preliminarily believes this effort represents an important step towards improving the efficiency of the national clearance and settlement system, and indeed towards making T+3 settlement more practicable.

As discussed above, an issue closely related to mandatory depository eligibility is how to prevent the practice of selling back to syndicate members during the new issue stabilization period, *i.e.*, flipping. The current practice by lead managers in the settlement of IPOs is to issue and deliver certificates in physical form in order to track the sale of securities during the stabilization period. Most of the commentators addressing the depository eligibility issue suggested that an alternative method of monitoring flipping be developed. The U.S. Working Committee of the Group of Thirty Focus Group on Flipping ("Focus Group") has developed a conceptual framework as an alternative to the current practice for monitoring flipping. The Focus Group intends to provide the controls for underwriters to monitor flipping while allowing book-entry settlement to occur.

Although a number of issues remain to be resolved, the Commission recognizes the potential benefits that can be achieved from mandatory depository eligibility and the development of an automated means of monitoring flipping, such as increasing the efficient operation of the clearance and settlement system. The Commission therefore encourages efforts to address concerns and advance these initiatives.

4. Same-Day Funds Settlement

Six commentators suggested that the industry should implement same-day funds settlement prior to shortening the settlement cycle. The Commission believes that significant risk reduction can be gained by converting to a same-day funds payment system. DTC and NSCC are preparing to convert to same-day funds settlement by late 1994 or early 1995. DTC and NSCC recently distributed a Memorandum that details how DTC and NSCC believe many aspects of the new same-day funds settlement system will function, and solicited comments on the proposal.

DTC now processes securities deliveries through two different settlement systems, one that settles in same-day funds ("SDFS") and

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Automated Clearing House Association ("NACHA") and is utilized by over 22,000 banks, thrifts, and other depository financial institutions on behalf of corporations and individuals.

[8] Letter from Elliott McEntee, President & Chief Executive Officer, NACHA, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[9] Letter from Elliott McEntee, President & Chief Executive Officer, NACHA, to Jeff Marquardt, Assistant Director, Payment Systems Studies & Payment System Risk Division of Reserve Bank Operations & Payment Systems, Board of Governors (August 31, 1993).

[10] *Id.*

[11] Letter from Stanley J. Kraska, President, SOA, to Jonathan G. Katz, Secretary, Commission (June 22, 1993). Flipping occurs when, during the new issue stabilization period, an investor sells the stock back to the syndicate or to another investor who in turn sells it back to the syndicate. Under current practice, the securities certificate number is used to identify which member of the syndicate sold the issue to the investor who "flipped" it back to the syndicate. Identifying that syndicate member allows the syndicate to recoup from the syndicate member a portion of the seller's concession.

[12] Letter from Salvatore N. Cucco, President, Data Management Division, to Jonathan G. Katz, Secretary, Commission (June 16, 1993).

[13] Telephone conversation with Richard Nesson, General Counsel, DTC (September 21, 1993).

the other in next-day funds ("NDFS"). The NDFS system primarily services corporate equities and corporate and municipal debt issues; the SDFS system primarily services commercial paper and other money market-like instruments. The vast majority of transactions that settle at DTC settle in its NDFS system, although the total value of the transactions that settle in the SDFS system is much larger than that in the NDFS system. NSCC currently operates a single NDFS system in which the money settlement obligations of NSCC's participants are the net results of all NSCC activity.

DTC's and NSCC's NDFS systems and operations are intertwined. DTC is the nation's largest depository for corporate and municipal securities, while NSCC, in addition to its other services, operates the securities industry's largest trade clearance and settlement system for corporate securities. Under the proposed SDFS system, DTC will combine its NDFS and SDFS systems into a single SDFS system, using its current SDFS system as the base design. DTC and NSCC will employ a mandatory netting procedure (expected to be implemented prior to SDFS conversion) whereby a participant's net debit at one organization will be netted against the amount of its net credit, if any, at the other organization. Participants will continue to settle separately with DTC and NSCC.

The same-day funds conversion project is intended to provide two major benefits: Standardization of the form in which funds are settled and risk reduction. It should simplify the cash management practices of firms that currently deal in both same-day and next-day funds settling securities, as well as reducing existing overnight exposure.

The Commission encourages DTC's and NSCC's efforts to finalize the details of the same-day funds proposal. The Commission urges DTC and NSCC to start an educational campaign targeting retail participants, and have the flow of information begin well ahead of the implementation date for Rule 15c6–1.

B. Regulatory Initiatives

As discussed below, the Commission will recommend to other appropriate regulatory authorities that they amend their rules as necessary and appropriate to permit three business day settlement.

1. Rule 10b–10

Some commentators suggested that implementation of a T+3 settlement period will require amendments to the Commission's confirmation rule, Rule 10b–10 adopted under the 1934 Act.[14] Rule 10b–10 requires that broker-dealers send customers written confirmation disclosing information relevant to the transaction "at or before completion" of the transaction.[15] Generally, Rule 15c1–1 under the 1934 Act defines "completion of the transaction" to mean the time when: (i) A customer is required to deliver the security being sold; (ii) a customer is required to pay for the security being purchased; or (iii) a broker-dealer makes a bookkeeping entry showing a transfer of the security from the customer's account or payment by the customer of the purchase price.[16]

Currently, broker-dealers typically send customer confirmations the day after trade date. While the confirmation must be sent by settlement, because the confirmation does not need to be received prior to settlement, the current practice of sending the confirmation the day after trade date will satisfy Rule 10b–10 even under T+3.

Implementation of T+3, however, may alter the confirmation's utility as a customer invoice because confirmation delivery and transfer of customer funds and securities may not be possible within the three day settlement period. Under the current five day settlement period, confirmations generally reach customers in time for the customer to review them prior to transferring funds or securities to the transacting broker-dealer. Under T+3, the customer frequently will not receive the confirmation through the mails by day three; thus, shortening the settlement period to three days may require broker-dealers either to cover the cost of the transaction for a longer period of time or demand funds or securities from the customer earlier than under current practice.[17] Accordingly, the Commission encourages broker-dealers to consider changes to their systems to dispatch confirmations as early as possible following execution of a trade. The Commission also encourages broker-dealers to develop and implement the systems necessary to provide customers, at the time of execution, the net purchase price.

In addition to serving currently as an invoice, the confirmation serves other significant investor protection functions. In particular, the confirmation serves as a written record of the customer's transaction, thus satisfying the Statute of Frauds,[18] provides customers a means of checking the accuracy of their trades, and informs the customer of the broker-dealer's status and often its compensation in connection with the trade. Although the Commission believes that implementation of T+3 will not create compliance problems with regard to Rule 10b–10, it is continuing to consider the effect of T+3 on the confirmation's investor protection functions.

2. Rules 15c3–1 and 15c3–3

Rule 15c3–1[19] establishes the net capital requirements for brokers and dealers. Rule 15c3–3[20] requires brokers and dealers to maintain possession or control of all customer fully paid and excess margin securities. Commentators asked the Commission to review these rules to determine whether amendments will be required to conform them to a shorter settlement timeframe.

In determining a broker-dealer's net capital under Rule 15c3–1, the broker-dealer deducts from net worth, as computed in accordance with generally accepted accounting principles, assets not readily convertible into cash, including most unsecured receivables. A broker-dealer also must deduct certain category specific percentages from the securities and commodity futures positions that it carries in its proprietary account. The rule also requires that a failed to deliver contract that has been outstanding for a certain specified period of time be treated as a proprietary position of the broker-dealer and subject to a percentage deduction. This time period is dependent upon the time from settlement date. A contract becomes a fail when it has not settled by the prescribed settlement date. By establishing a shorter settlement timeframe, Rule 15c6–1 will affect the 15c3–1 requirements correspondingly, thus a contract will become a fail in three business days rather than the current five business days.

As with Rule 15c3–1, some of the requirements imposed on broker-dealers by Rule 15c3–3 are dependent upon the time from settlement. One commentator, Goldman Sachs,[21] referred specifically to Rule 15c3–3(m).[22] Rule 15c3–3(m) requires that a broker or dealer that has executed a sell order for a customer, and has not obtained possession of such securities from the customer within ten business days after the settlement date, must immediately close the transaction with the customer by purchasing securities of like kind and quantity.

The Commission notes that Rule 15c6–1 merely changes the number of days following the trade date that settlement will occur. For example, under the new rule, the ten day time period referred to in Rule 15c3–3(m) would generally begin three business days following the trade date, instead of the five business day convention currently in effect. Therefore, Rules 15c3–1 and 15c3–3 are consistent with Rule 15c6–1.[23]

3. Regulation T ("Reg T")

Commentators urged the Commission, in conjunction with the Federal Reserve Board, to review Reg T[24] to determine how, if at all, Reg T should be modified. Currently, Reg T does not require that any action be taken unless a customer fails to pay for securities within seven business days of the trade date. The concern is that Reg T as currently drafted could leave customers and brokers and

[14] 17 CFR 240.10b–10.

[15] 17 CFR 240.10b–10(a).

[16] 17 CFR 240.15c1–1(b).

[17] Rule 10b–10 does not specify mail delivery as the sole means of sending customer confirmations. Facsimile transmissions would be acceptable under the Rule as well.

[18] Uniform Commercial Code section 8–319 states that a "contract for the sale of securities is not enforceable by way of action or defense unless * * * there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price." U.C.C. 8–319 (1990).

[19] 17 CFR 240.15c3–1.

[20] 17 CFR 240.15c3–3.

[21] Letter from Anthony J. Leitner, Vice President-Associate General Counsel, Goldman Sachs, to Jonathan G. Katz, Secretary, Commission (June 30, 1993).

[22] 17 CFR 240.15c3–3(m).

[23] Similarly, the Commission notes that the time periods indicated in the formula for determining reserve requirements for brokers and dealers, Rule 15c3–3a, also are consistent with Rule 15c6–1.

[24] Reg T, 12 CFR part 220, *et. seq.*, imposes, among other things, initial margin requirements and payment rules on securities transactions. See 15 U.S.C. 78a *et seq.*, part 220.

dealers with the impression that payment from the customer is not due in a three day settlement environment until the expiration of the seven-day period specified by Reg T.

Consistent failures of customers to make payment until seven days would diminish greatly the benefits to be achieved from Rule 15c6–1. Recently, the Federal Reserve Board published notice of its intent to review Reg T generally, including perhaps tying the deadline for payment to settlement date.[25] Accordingly, the Commission has authorized the Division to request the Federal Reserve Board staff to consider whether conforming amendments to Reg T requiring payment from customers within two business days following the settlement date would be appropriate.

4. Disclosure of Depository Eligibility

In the Proposing Release, the Commission solicited comment on whether the Commission should adopt a disclosure requirement under the 1933 Act concerning depository eligibility of an IPO. The disclosure requirement, as discussed in the Proposing Release, would require disclosure of whether the securities being offered in an IPO are depository eligible, and if not, why not.

Five commentators supported the adoption of a disclosure requirement for IPOs as described above. The Cashiers' Association, DTC, and CHX agreed that the Commission should adopt a disclosure requirement concerning depository eligibility of IPOs, but these commentators believed that it was not necessary to include as an exhibit to the registration statement a letter from a securities depository confirming that the securities are eligible for deposit with that depository. Three commentators opposed the proposal, stating that it was unnecessary.

The Commission believes that depository eligibility is important to perfecting the national clearance and settlement system. Moreover, the Commission believes that disclosure regarding whether or not an IPO is, or will be, eligible for deposit at a securities depository is appropriate. SRO rules require broker-dealers to use depositories to confirm and settle trades in depository eligible securities. Disclosure that the securities are not depository eligible will facilitate compliance and efficient clearance and settlement in the secondary market immediately after the offering. Accordingly, the Commission is directing the staff to pursue requiring disclosure when neither the issuer nor the underwriter are intending to make the securities being offered depository eligible.

[FR Doc. 93–25093 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–P

[25] See Securities Credit Transactions, Review of Regulation T, "Credit by Brokers and Dealers" (August 18, 1992), 57 FR 37109.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC28

Supplemental Security Income for the Aged, Blind, and Disabled; Payment of Benefits Due Deceased Recipients

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect the requirements of section 8 of the Employment Opportunities for Disabled Americans Act which expanded our authority to pay supplemental security income (SSI) benefits due persons who are deceased. We explain we are now authorized to pay SSI benefits due a deceased individual to a surviving spouse and may also pay SSI benefits due a deceased disabled or blind child to parent(s) under certain conditions. These regulations also make several other changes that are unrelated to this legislation but which clarify longstanding policy or involve overpayment and underpayment issues.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1759.

SUPPLEMENTARY INFORMATION: These final rules reflect section 1631(b)(1) of the Social Security Act (the Act), as amended by section 8 of Public Law 99–643, the Employment Opportunities for Disabled Americans Act, by revising the circumstances under which SSI benefits, that may be due persons who have died, may be paid to survivors. Under these rules, if the deceased had a spouse, as spouse is defined in § 416.1806, in the month of death, who was not his or her "eligible spouse," as defined in § 416.1801, that spouse may be paid any benefits due the deceased for the month of June 1986 and for later months if the surviving spouse was "living in the same household" with the deceased in the month of death or within the 6 months preceding the month of death. These rules do not change the current rules that permit payment of benefits due the deceased individual to an eligible spouse.

Under section 1631(b)(1)(A)(i), a spouse and the deceased were "living in the same household" if they were "living in the same household" under the rules for title II lump-sum death payments made pursuant to section 202(i) of the Act in the month of death or within the 6 months preceding the month of death. See § 404.347. Since the rules in the SSI program for "deeming" income from one spouse to another are more restrictive than the rules in section 202(i), an ineligible spouse who was "living in the same household" with the deceased for purposes of deeming will automatically meet the "living in the same household" test of section 202(i).

Under these final rules, if the deceased individual was a disabled or blind child at the time the underpayment occurred, and was living with his or her parent(s) in the month of death or within the 6 months preceding the month of death, the underpayment may be paid to the parent(s). The term "child" is defined in § 416.1856 to mean an individual under 18 years of age, or a student under 22 years of age, who is not married and not the head of a household. However, only a natural or adoptive parent may qualify for the benefits due. A stepparent who was not an adoptive parent cannot qualify since the statute specifies payment only to a parent or parents but does not include the spouse of a parent. Without specific legislative authority or any indication in the legislative history that Congress intended stepparents to qualify for benefits due to the deceased individual, we have no clear basis for making such payments to stepparents. Therefore, if the deceased individual was living with a natural or adoptive parent or parents in the month of death or within the 6 months preceding the month of death, we can pay that parent or parents any SSI underpayment due the deceased individual which occurred while such individual was a blind or disabled child. The authority to so pay parents was effective with respect to benefits payable for months after May 1986.

Under these final regulations, if the deceased individual was living with his spouse within the meaning of section 202(i) of the Act in the month of death or within the 6 months preceding the month of death, and with a natural or adoptive parent(s) in the month of death or within the 6 months preceding the month of death, we will pay the parent(s) any SSI underpayment due a deceased individual which occurred for months the deceased was a blind or disabled child, and we will pay the spouse any SSI underpayment due the deceased individual which occurred for months he or she no longer met the definition of "child" as defined in § 416.1856. In cases in which both the parent(s) and the spouse qualify for payment of the underpayment but the parent(s) cannot be paid due to death or

some other reason, then the underpayment will be paid to the spouse.

Under these final regulations, an individual who was a disabled or blind child at the time the underpayment occurred will be considered to have been "living with" his or her parent(s) in the period if the individual satisfies the "living with" criteria we use when applying the rules for deeming of income (§ 416.1165), or would have satisfied the criteria had his or her death not precluded the application of such criteria throughout a month. We considered establishing a requirement of "actual physical cohabitation" to establish that the parent(s) and deceased individual lived together in the month of death or within the 6 months preceding the month of death. Instead, we chose a policy that would establish that the deceased individual was "living with" his or her parent(s) if the deceased individual and his or her parent(s) were in the same household under the rules for deeming of parental income. Requiring actual physical cohabitation would create a new definition of "living with" and thus would complicate the administration of the program. The definition used in "deeming" uses the general rule of "actual physical cohabitation" with some common sense exceptions for "temporary absences," and this will best effectuate the intent of the amendment.

Determinations about any SSI benefits payable to survivors, and how and to whom benefits will be paid, are "initial determinations," as defined in § 416.1402, giving rise to administrative and judicial appeal rights. If an individual dies after requesting an administrative law judge hearing or Appeals Council review, we will not dismiss the request if a spouse or parent qualified to receive any SSI benefits due the deceased individual wishes to continue the proceedings. We will also not dismiss a pending request for a hearing or Appeals Council review upon the death of the individual if the deceased authorized IAR to a State, even if there is no spouse or parent to pursue the appeal.

Regulatory Changes

The current rules at §§ 416.340 and 416.345 authorize the use of the date of a written statement or oral inquiry as an individual's date of application for SSI benefits. The current rules also provide that if the individual dies before he or she has filed an application, the date of the written statement or oral inquiry will be used as the date of application if the deceased's eligible spouse or someone on his or her behalf files an SSI application, and the eligible spouse lived with the deceased within 6 months immediately preceding the individual's death. These final regulations at §§ 416.340(d)(2) and 416.345(e)(2) provide that we will use the date of the written or oral inquiry as the date of application if the claimant dies before an application is filed and a surviving eligible or ineligible spouse or parent of an individual who was a blind or disabled child at the time the underpayment occurred who could be paid the SSI benefits as a survivor or someone on the survivor's behalf files an SSI application form within the prescribed time.

The current rules at § 416.533 bar payment of SSI benefits to a transferee or assignee of an eligible individual except for amounts due a State or political subdivision as IAR. These final regulations at § 416.533 provide that any SSI benefit amounts payable to survivors are also not subject to advance transfer or assignment.

We are also clarifying the current rules at § 416.536 to delete references to underpayment amounts for a "month." As explained in the introductory paragraph in § 416.536 and the provisions of § 416.538, we determine underpayments for a "period" rather than by month. Further, the final rule at § 416.536 contains a phrase identical to that now set forth in § 416.537(a) that explains when payment of benefits is made. This change standardizes the rule as to when payment of benefits is to be made for underpayments with the rule regarding overpayments.

The current rules at § 416.537(b)(2) provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be payable to his or her surviving eligible spouse. We are revising the rules at § 416.537(b)(2) to provide that a penalty is not an adjustment of an overpayment and is imposed only against any amount due the penalized individual or, after death, any amount due the deceased which otherwise would be paid to his or her survivor.

The current rules at § 416.538 permit no delay in a determination and payment of an underpayment otherwise due unless we can make a determination for an apparent overpayment before the close of the month following the month in which we discovered the underpayment. These final rules at § 416.538 will (1) maintain current rules regarding underpayments to eligible individuals and (2) add new rules which permit a postponement to enable us to resolve all overpayments, incorrect payments, adjustments, and penalties before we determine an underpayment and pay unpaid SSI benefits to an ineligible survivor or to an individual who is now ineligible. This is intended to provide additional time to apply the rule in § 416.543 accurately and thus provides the best opportunity of collecting an overpayment from a survivor or a person who is ineligible for SSI.

The current rules at § 416.538 provide that we can offset a penalty assessed against an individual's benefit against SSI benefits due the individual that are otherwise payable to his or her surviving eligible spouse. These final rules at § 416.538 provide that we can offset a penalty against SSI benefits due the deceased that are otherwise payable to a survivor.

The current rules at § 416.542(b) permit payment of SSI benefits due a deceased individual only to a surviving spouse who was eligible for SSI benefits and was living in the same household with the deceased in the month of death or was not separated from the individual for 6 months at the time of death. These final rules at § 416.542(b) permit payment to the surviving member of an eligible couple, a surviving spouse who was not a member of an eligible couple, or a natural or adoptive parent if the deceased was a blind or disabled child when the underpayment occurred and where the requirements regarding living arrangements are met.

These final rules at § 416.542 also prohibit payment of SSI benefits that may be due a deceased individual to a person who intentionally caused the death of the individual and prohibit payment of such benefits to a survivor, other than an eligible spouse, who requests the payment more than 24 months after the month of the individual's death. The first change is based on our longstanding policy of prohibiting a person who intentionally causes the death of another individual from profiting from that action. The second change responds to the need to set a reasonable administrative limit on the time a survivor may request payment of SSI benefits that may be due a deceased individual. The limit for other than the eligible spouse is set at 24 months to make the time the same as the title II rule for applying for lump-sum death benefits under § 404.391(b). There is no such time limit for eligible spouses under preexisting regulations at § 416.542.

The current rules at § 416.543 give priority consideration to applying SSI benefits due a deceased individual and

payable to a surviving eligible spouse against any overpayment to the spouse unless we have waived recovery. The final rules at § 416.543 extend this priority consideration to include benefits due a deceased individual and payable to a survivor who has received any overpayments unless we have waived recovery of the survivor's overpayment.

These final rules add the determinations concerning how much and to whom SSI benefits due a deceased individual will be paid to the list of administrative actions that are initial determinations at § 416.1402, extending administrative and judicial appeal rights to those determinations.

The current rules at § 416.1457(c)(4) authorize an administrative law judge (ALJ) to dismiss a request for a hearing if the person requesting the hearing dies, there are no other parties, and there is no information to show that the deceased may have an eligible spouse. Under these final rules at § 416.1457(c)(4), an ALJ may not dismiss the request for a hearing of a deceased individual if there is an eligible spouse or other survivor who could be qualified to receive the benefits and who wishes to pursue the request for hearing, or if the deceased individual authorized IAR to a State pursuant to section 1631(g) of the Act.

The current rules at § 416.1471(b) authorize the Appeals Council to dismiss a request for review if the person requesting the review or any other party to the proceedings dies and the record clearly shows that there is no other person who may be the deceased's eligible spouse who wishes to continue the action.

Under these final rules at § 416.1471(b), the Appeals Council may not dismiss the request for review of a deceased individual if there is an eligible spouse or survivor who could be qualified to receive the benefits and who wishes to continue the action or if the deceased individual authorized IAR to a State pursuant to section 1631(g) of the Act.

Public Comments

These rules were published as a Notice of Proposed Rulemaking (NPRM) at 55 FR 37249 on September 10, 1990. We received two responses commenting on the proposed rules.

Comment: The first commenter expressed concern that § 416.538(c) deviated from current policy of promptly paying underpayments to recipients and eligible spouses by delaying payment to ineligible individuals and/or survivors.

Response: Although § 416.538(c) of the proposed regulations states that we may delay issuance of underpayments due an individual who is no longer eligible and certain survivors, we are not deviating from present policy on the payment of underpayments to currently eligible recipients.

Prior to the enactment of this legislation, payment of benefits otherwise due could be paid only to the SSI recipient or the surviving eligible spouse. The prior regulations also specified that when there was an apparent overpayment and no determination had been reached on that overpayment, payment of benefits otherwise due had to be paid by the close of the month following the month the underpaid amount was discovered.

We did not intend to give the impression that the payment of underpayments to other survivors could be delayed indefinitely. To that end, even though we are not bound by the prior regulatory time restriction for eligible recipients, we believe that all survivors deserve prompt attention and should be paid any benefits due both timely and correctly. These new regulations only permit us to review the record of the deceased individual (or the ineligible individual's old record) to determine if there are any discrepancies on the record which need to be resolved (e.g., an overpayment, IAR to a State, or a penalty).

Otherwise, if the benefits due were paid to an ineligible individual or survivor immediately without the resolution of any overpayments or discrepancies on the deceased individual's record, we would have limited methods of collecting the outstanding debt from the ineligible individual or survivor. On the other hand, when benefits are due to an eligible individual or eligible spouse, we can recover overpaid amounts directly from the individual. In addition, this review of the record also allows us to make certain that when the benefits are paid, they are paid to the individual to whom they are due. Our present operating instructions reflect the need for expeditious action on these cases which fall under § 416.538(c).

Comment: Another commenter expressed concern that there may be a broader interpretation of a portion of section 1631(b)(1)(A)(ii) which was not being given consideration. The commenter suggested that the statutory language could be read to mean that the underpaid individual need not have been a child in the month of death in order to pay the underpayment to his or her parent(s).

Response: Our interpretation of the statutory provision, as set forth in the NPRM, required the deceased to have been a child in the month of death. In our view, this was, and continues to be, the most natural reading of the statute.

However, we have decided that the interpretation suggested by the commenter is an acceptable reading as well. This interpretation will allow us to pay underpayments to parent(s) of individuals who would have received benefits as blind or disabled children if their claims had been awarded on a timely basis. However, any underpayments payable to parent(s) will only be payable for months after May 1986 for which benefits were due and only for months of eligibility in which the deceased individual was a child as defined in § 416.1856. This latter requirement allows us to maintain the integrity of the statutory provision requiring that the underpayment have been due "a disabled or blind child."

Because of the broader interpretation of the statute resulting from the additional comment we received, it is now possible that both a spouse and parent(s) could be eligible to receive the same underpayment due a deceased individual. If the underpayment occurred for months the individual was a blind or disabled child, and if the individual subsequently married, the underpayment could be paid to *either* the parent(s) or the spouse in cases where both the parent(s) and the spouse were living in the same household with that individual within 6 months of the month of his or her death. However, if the underpayment in such a case occurred for months *after* the individual married or ceased to be a child, as that term is defined in section 1614(c) of the Act and the regulation at 20 CFR 416.1856, then, as explained above, the underpayment could not be paid to the parents under the revised interpretation of section 1631(b)(1)(A)(ii) since the underpayment was not due "a disabled or blind child."

For cases in which the underpayment could be paid to both a parent(s) and a spouse for the period of time that the individual was a child, we will pay the underpayment to the parent(s) since the underpayment occurred while the deceased was a disabled or blind child.

Of course, in cases in which both the parent(s) and the spouse qualify for payment of the underpayment but the parent(s) cannot be paid due to death or some other reason, then the underpayment will be paid to the spouse.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the costs are expected to be less than $100 million and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations do not impose recordkeeping or reporting requirements on the public.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and Recordkeeping requirements, Supplemental Security Income.

Dated: April 8, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 20, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts C, E and N of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart C—Filing of Applications

1. The authority citation for subpart C of part 416 continues to read as follows:

Authority: Secs. 1102, 1611, and 1631(a), (d), and (e) of the Social Security Act; 42 U.S.C. 1302, 1382, and 1383(a), (d), and (e).

2. In part 416, subpart C, § 416.340(d)(2) is revised to read as follows:

§ 416.340 Use of date of written statement as application filing date.

* * * * *

(d) * * *

(2) If the claimant dies after the written statement is filed, the deceased claimant's surviving spouse or parent(s) who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent(s) files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

3. In part 416, subpart C, § 416.345(e)(2) is revised to read as follows:

§ 416.345 Use of date of oral inquiry as application filing date.

* * * * *

(e) * * *

(2) If the claimant dies after the oral inquiry is made, the deceased claimant's surviving spouse or parent(s) who could be paid the claimant's benefits under § 416.542(b), or someone on behalf of the surviving spouse or parent(s) files an application form. If we learn that the claimant has died before the notice is sent or within 60 days after the notice but before an application form is filed, we will send a notice to such a survivor. The notice will say that we will make an initial determination of eligibility for SSI benefits only if an application form is filed on behalf of the deceased within 60 days after the date of the notice to the survivor.

Subpart E—Payment of Benefits, Overpayments, and Underpayments

4. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631(a), (b), (d), and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383(a), (b), (d), and (g).

5. In part 416, subpart E, the first sentence of § 416.533 is revised to read as follows:

§ 416.533 Transfer or assignment of benefits.

Except as provided in § 416.525 and subpart S of this part, the Social Security Administration will not certify payment of supplemental security income benefits to a transferee or assignee of a person eligible for such benefits under the Act or of a person qualified for payment under § 416.542.

* * *

6. In part 416, subpart E, § 416.536 is revised to read as follows:

§ 416.536 Underpayments—defined.

An underpayment can occur only with respect to a period for which a recipient filed an application, if required, for benefits and met all conditions of eligibility for benefits. An underpayment, including any amounts of State supplementary payments which are due and administered by the Social Security Administration, is:

(a) Nonpayment, where payment was due but was not made; or

(b) Payment of less than the amount due. For purposes of this section, payment has been made when certified by the Social Security Administration to the Department of the Treasury, except that payment has not been made where payment has not been received by the designated payee, or where payment was returned.

7. In part 416, subpart E, § 416.537(b)(2) is revised to read as follows:

§ 416.537 Overpayments—defined.

* * * * *

(b) * * *

(2) *Penalty.* The imposition of a penalty pursuant to § 416.724 is not an adjustment of an overpayment and is imposed only against any amount due the penalized recipient, or, after death, any amount due the deceased which otherwise would be paid to a survivor as defined in § 416.542.

8. In part 416, subpart E, § 416.538 is revised to read as follows:

§ 416.538 Amount of underpayment or overpayment.

(a) *General.* The amount of an underpayment or overpayment is the difference between the amount paid to a recipient and the amount of payment actually due such recipient for a given period. An underpayment or overpayment period begins with the first month for which there is a difference between the amount paid and the amount actually due for that month. The period ends with the month the initial determination of overpayment or underpayment is made. With respect to the period established, there can be no underpayment to a recipient or his or her eligible spouse if more than the correct amount payable under title XVI of the Act has been paid, whether or not adjustment or recovery of any overpayment for that period to the recipient or his or her eligible spouse has been waived under the provisions of §§ 416.550 through 416.556. A subsequent initial determination of overpayment will require no change with respect to a prior determination of overpayment or to the period relating to such determination to the extent that

the basis of the prior overpayment remains the same.

(b) *Limited delay in payment of underpaid amount to recipient or eligible surviving spouse.* Where an apparent overpayment has been detected but determination of the overpayment has not been made (see § 416.558(a)), a determination of an underpayment and payment of an underpaid amount which is otherwise due cannot be delayed to a recipient or eligible surviving spouse unless a determination with respect to the apparent overpayment can be made before the close of the month following the month in which the underpaid amount was discovered.

(c) *Delay in payment of underpaid amount to ineligible individual or survivor.* A determination of an underpayment and payment of an underpaid amount which is otherwise due an individual who is no longer eligible for SSI or is payable to a survivor pursuant to § 416.542(b) will be delayed for the resolution of all overpayments, incorrect payments, adjustments, and penalties.

(d) *Reduction of underpaid amount.* Any underpayment amount otherwise payable to a survivor on account of a deceased recipient is reduced by the amount of any outstanding penalty imposed against the benefits payable to such deceased recipient or survivor under section 1631(e) of the Act (see § 416.537(b)(2)).

9. In part 416, subpart E, § 416.542 is amended by revising the section heading, revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 416.542 Underpayments—to whom underpaid amount is payable.

* * * * *

(b) *Underpaid recipient deceased—underpaid amount payable to survivor.* (1) If a recipient dies before we have paid all benefits due or before the recipient endorses the check for the correct payment, we may pay the amount due to the deceased recipient's surviving eligible spouse or to his or her surviving spouse who was living with the underpaid recipient within the meaning of section 202(i) of the Act (see § 404.347) in the month he or she died or within 6 months immediately preceding the month of death. (2) If the deceased underpaid recipient was a disabled or blind child when the underpayment occurred, the underpaid amount may be paid to the natural or adoptive parent(s) of the underpaid recipient who lived with the underpaid recipient in the month he or she died or within the 6 months preceding death. We consider the underpaid recipient to have been living with the natural or adoptive parent(s) in the period if the underpaid recipient satisfies the "living with" criteria we use when applying § 416.1165 or would have satisfied the criteria had his or her death not precluded the application of such criteria throughout a month. (3) If the deceased individual was living with his or her spouse within the meaning of section 202(i) of the Act in the month of death or within 6 months immediately preceding the month of death, and was also living with his or her natural or adoptive parent(s) in the month of death or within 6 months preceding the month of death, we will pay the parent(s) any SSI underpayment due the deceased individual for months he or she was a blind or disabled child and we will pay the spouse any SSI underpayment due the deceased individual for months he or she no longer met the definition of "child" as set forth at § 416.1856. If no parent(s) can be paid in such cases due to death or other reason, then we will pay the SSI underpayment due the deceased individual for months he or she was a blind or disabled child to the spouse. (4) No benefits may be paid to the estate of any underpaid recipient, the estate of the surviving spouse, the estate of a parent, or to any survivor other than those listed in paragraph (b)(1) through (3) of this section. Payment of an underpaid amount to an ineligible spouse or surviving parent(s) may only be made for benefits payable for months after May 1986. Payment to surviving parent(s) may be made only for months of eligibility during which the deceased underpaid recipient was a child. We will not pay benefits to a survivor other than the eligible spouse who requests payment of an underpaid amount more than 24 months after the month of the individual's death.

(c) *Underpaid recipient's death caused by an intentional act.* No benefits due the deceased individual may be paid to a survivor found guilty by a court of competent jurisdiction of intentionally causing the underpaid recipient's death.

10. In part 416, subpart E, § 416.543 is revised to read as follows:

§ 416.543 Underpayments—applied to reduce overpayments.

We apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist (see § 416.558) for a different period, unless we have waived recovery of the overpayment under the provisions of §§ 416.550 through 416.556. Similarly, when an underpaid recipient dies, we first apply any amounts due the deceased recipient that would be payable to a survivor under § 416.542(b) against any overpayment to the survivor unless we have waived recovery of such overpayment under the provisions of §§ 416.550 through 416.556.

Example: A disabled child, eligible for payments under title XVI, and his parent, also an eligible individual receiving payments under title XVI, were living together. The disabled child dies at a time when he was underpaid $100. The deceased child's underpaid benefit is payable to the surviving parent. However, since the parent must repay an SSI overpayment of $225 on his own record, the $100 underpayment will be applied to reduce the parent's own overpayment to $125.

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

11. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

12. In part 416, subpart N, § 416.1402 is amended by removing the word "and" at the end of paragraph (k), replacing the period at the end of paragraph (l) with "; and", and adding paragraph (m) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(m) How much and to whom benefits due a deceased individual will be paid.

13. In part 416, subpart N, § 416.1457(c)(4) is revised to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

* * * * *

(c) * * *

(4) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for hearing, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The administrative law judge, however, will vacate a dismissal of the hearing request if, within 60 days after the date of the dismissal:

(i) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for a hearing, and shows

that a decision on the issues that were to be considered at the hearing may adversely affect him or her; or

(ii) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

14. In part 416, subpart N, § 416.1471(b) is revised to read as follows:

§ 416.1471 Dismissal by Appeals Council.

* * * * *

(b) You die, there are no other parties, and we have no information to show that you may have a survivor who may be paid benefits due to you under § 416.542(b) and who wishes to pursue the request for review, or that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act. The Appeals Council, however, will vacate a dismissal of the request for review if, within 60 days after the date of the dismissal:

(1) A person claiming to be your survivor, who may be paid benefits due to you under § 416.542(b), submits a written request for review, and shows that a decision on the issues that were to be considered on review may adversely affect him or her; or

(2) We receive information showing that you authorized interim assistance reimbursement to a State pursuant to section 1631(g) of the Act.

[FR Doc. 93–24984 Filed 10–12–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 422

Review Procedures Under the Coal Industry Retiree Health Benefit Act of 1992 (Pub. L. 102–486)

AGENCY: Social Security Administration, HHS.

ACTION: Final rules, with request for comments.

SUMMARY: These final rules implement section 9706(f) of the Internal Revenue Code (IRC), enacted on October 24, 1992, as part of the Energy Policy Act of 1992, which contains the Coal Industry Retiree Health Benefit Act (the Coal Act) of 1992. Under section 9706 of the IRC, the Secretary of Health and Human Services (the Secretary) will assign to certain coal operators and related persons the responsibility for paying annual health and death benefit premiums and unassigned beneficiary premiums for retired miners and their eligible family members (eligible beneficiaries) who were eligible as of July 20, 1992 to receive and were receiving benefits under the 1950 or 1974 United Mine Workers of America (UMWA) Benefit Plans. Under section 9706(f) of the IRC, assigned operators (or related persons) may request the Secretary to provide detailed information regarding the assignments and to review the assignments. These rules explain how this review process will be carried out.

DATES: *Effective Date:* These rules are effective October 13, 1993.

Comments: Because we are not publishing proposed rules with an opportunity for comments, we are requesting comments on these final rules. Comments should be submitted on or before November 12, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–8471.

SUPPLEMENTARY INFORMATION: The 1950 and 1974 UMWA Benefit Plans for miners and their families were funded by contributions from those coal operators who signed wage agreements with the UMWA Union. These agreements provided health and other benefits for miners and certain others related to the miners and were renewed every few years in negotiations between the Union and the operators. Over the past several years, many of these operators went out of business, while others continued in business but without renewing their wage agreements with the Union. The consequence to the UMWA Benefit Plans was a continuing decline in contributions in the face of rising medical costs for miners. In effect, fewer and fewer coal operators were contributing to the costs of health insurance premiums for miners who had worked in the past for operators no longer making contributions. In 1992, with the Plans running large deficits, the Coal Act was enacted to ensure that retired miners (and their families) would continue to receive their health benefits in the future.

The Coal Act continues these benefits under a new plan, the UMWA Combined Benefit Fund, into which the old plans are merged. Per capita premiums under the Coal Act are assessed coal operators (or related persons) based upon the miner's employment history. The term "related persons" includes corporations, partnerships, and other business ventures in addition to individuals. Using rules set forth in the Coal Act, we will assign responsibility for paying such premiums for each retired miner (and his or her eligible family member) who was receiving benefits under the 1950 or the 1974 UMWA Benefit Plans as of July 20, 1992, to a particular coal operator (or related person) for which the miner worked or, if we are unable to assign, to a pool of unassigned eligible beneficiaries. Annual premiums for the "unassigned" are paid for on a proportionate basis by those operators assigned premium responsibility for other eligible beneficiaries.

Since the Social Security Administration (SSA) maintains earnings record information for the nation's workers, the Secretary has delegated to SSA the responsibility for examining the miners' earnings records and assigning eligible beneficiaries for premium liability purposes to individual coal operators (or related persons). About 120,000 beneficiaries will be affected by this one-time assignment activity which must be completed before October 1, 1993.

We will provide notices of the assignments to the assigned operators (or related persons) and to the UMWA Combined Benefit Fund Trustees who administer the new Fund, but we will not send notices to the eligible beneficiaries. The notice of assignment will inform the operator that the operator may, within 30 days of receiving the notice, request detailed information as to the work history of a miner and the basis for the assignment and that the assigned operator may thereafter ask for a review of the assignment of any eligible beneficiary within 30 days of receiving the detailed information. Alternatively, within 30 days of receiving the notice and without first requesting detailed information, the operator may ask us to review the assignment. In that case, we will not process the request for review until at least 30 days after the operator received the notice of assignment, in case the operator wants to request detailed information and submit additional evidence.

Only the assigned operator (or related person) may request the detailed information and request SSA to review

and revise its assignment. The requests must be filed within the periods specified in the Coal Act. We will review the assignment only if the assigned operator presents a prima facie case of error regarding the assignment. The review will be a review on the record and will not entail a face-to-face hearing. If review is denied, or if granted and the assignment is found correct, SSA's decision is final.

In these regulations, we explain the detailed information that the operator may request for any miner for whom we have assigned premium responsibility to that operator. We explain that the request must be filed with us within 30 days after the assigned operator received the assignment notice, as provided in the Coal Act. We will assume that the operator received the assignment notice within 5 days of the date shown on the notice. If the operator presents evidence to show that the operator received the notice more than 5 days after the date shown on the notice, we will consider the operator's request to be timely filed if the operator files the request within 30 days of the date of receipt.

We explain in these regulations how an assigned operator may request review of any assignment and explain that a request for review must be accompanied by evidence constituting a prima facie case of error. Although not required by the Coal Act, we provide in these regulations that if an operator files a request for review and asks for additional time to submit evidence, we will not process the request for review for 90 days from the date it was filed in order to allow the operator to submit the evidence. We also provide that an assigned operator may request review within 30 days after receiving the notice of assignment, without having requested detailed information. In that case, we will not process the request for review until at least 30 days after the operator received the notice of assignment. Thus, the operator will still have the 30 days provided by statute to request detailed information. If, subsequent to requesting review within 30 days of receiving the notice of assignment, the operator requests detailed information within that same 30-day period, we will send the information and not process the request for review until at least 30 days after the date the operator receives the detailed information. These time frames will allow the operator to review the detailed information, if desired, and then to submit any additional evidence.

The Coal Act provides for only a reconsideration by the Secretary of Health and Human Services, which will be a review on the record and will not include a face-to-face hearing. An SSA employee who was not previously involved in the assignment of premium responsibility to the operator will perform the review.

SSA is responsible for the accuracy of the assignment of premium responsibility in terms of the employment relationship of the miner to the assigned operator under the provisions of the Coal Act. However, we are not responsible for determining which individuals are eligible for health benefits or the amount of their benefits, or for assessing coal operators (or related persons) for premiums under the Coal Act. Accordingly, these issues cannot be raised as part of the review process set out in these rules.

Although our determination on review is final as to the operator's request, we provide in the regulations that we may on our own initiative reopen an assignment, whether or not it has been reviewed, within one year of the notice of the assignment if evidence in file shows that there is error on the face of the record or that the assignment was based on fraud. Absent any statutory provision for reopening an assignment, we believe that this policy offers reasonable protection for both the operators and SSA.

Regulatory Procedures

Justification for Final Rules Without Proposed Rules

The Department, even when not required by statute, as a matter of policy, generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and prior public comment procedures because such procedures are impracticable in this case, as is explained below.

Although the Coal Act was enacted on October 24, 1992, Congress did not provide funding for the Department of Health and Human Services to implement the assignment provisions. Moreover, the Department did not have the authority to allocate other funds appropriated to it by Congress to carry out this activity. Because SSA could not expend money to implement the Coal Act until money was appropriated, we could not issue rules or begin implementation until funding was provided. A supplemental appropriation for these purposes was not approved until July 2, 1993 in the Supplemental Appropriation Act of 1993 (Pub. L. 103–50). At the same time, the Coal Act requires that all assignments be made before October 1, 1993.

We believe it is desirable for assigned operators to be aware that we have in place a Coal Act review process to implement section 9706(f) of the IRC. The use of prior notice and comment procedures would necessarily delay the issuance of final rules until well after the time assigned operators would have had—under statutory deadlines—to file their requests for detailed information and for review. Nevertheless, SSA is seeking public comments on these final rules to see whether there are ways to make the rules more effective. We will publish any changes to these regulations that we believe are needed as a result of the public comments.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Because we have determined that good cause exists for waiver of prior notice and comment procedures as impracticable, we are not required by the Regulatory Flexibility Act (Pub. L. 96–354) to prepare and make available for public comments a regulatory flexibility analysis. Nevertheless, we do not believe that this regulation will have a significant economic impact on a substantial number of small entities because it affects primarily large coal mine and related operators. In addition, relatively few small coal operators active prior to 1978 (when most of the retired miners now eligible for benefits under the Coal Act were working) are still in business and subject to assignment by SSA.

Paperwork Reduction Act

These final regulations contain reporting requirements in §§ 422.604 and 422.605. As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3507, we will submit a copy to the Office of Management and Budget for its review.

Public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time it will take to read the instruction, gather the necessary facts

and provide the information. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTENTION: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960–NEW), Washington, DC 20503.

(Catalog of Federal Domestic Assistance Program—No listing)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure; Freedom of information; Organization and functions (Government agencies); Social Security.

Dated: September 1, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 27, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Subpart G is added to part 422 of 20 CFR chapter III to read as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

Sec.

422.601 Scope and purpose.
422.602 Terms used in this subpart.
422.603 Overview of the review process.
422.604 Request for detailed information.
422.605 Request for review.
422.606 Processing the request for review.
422.607 Limited reopening of assignments.

Authority: Secs. 19141–19143 of the Energy Policy Act of 1992, Pub. L. 102–486; 106 Stat. 3047.

Subpart G—Administrative Review Process Under the Coal Industry Retiree Health Benefit Act of 1992

§ 422.601 Scope and purpose.

The regulations in this subpart describe how the Social Security Administration (SSA) will conduct reviews of assignments it makes under provisions of the Coal Industry Retiree Health Benefit Act of 1992 (the Coal Act). Under the Coal Act, certain retired coal miners and their eligible family members (beneficiaries) are assigned to particular coal operators (or related persons). These operators are then responsible for paying the annual health and death benefit premiums for these beneficiaries as well as the annual premiums for certain unassigned coal miners and eligible members of their families. We will notify the assigned operators of these assignments and give each operator an opportunity to request detailed information about an assignment and to request review of an assignment. We also inform the United Mine Workers of America (UMWA) Combined Benefit Fund Trustees of each assignment made and the unassigned beneficiaries so they can assess appropriate annual premiums against the assigned operators. This subpart explains how assigned operators may request such additional information, how they may request review of an assignment, and how reviews will be conducted.

§ 422.602 Terms used in this subpart.

Assignment means our selection of the coal operator or related person to be charged with the responsibility of paying the annual health and death benefit premiums of certain coal miners and their eligible family members.

Beneficiary means either a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits as an eligible individual under the 1950 or the 1974 UMWA Benefit Plan, or an individual who was eligible to receive, and receiving, benefits on July 20, 1992 as an eligible relative of a coal industry retiree.

Evidence of a prima facie case of error means documentary evidence, records, and written statements submitted to us by the assigned operator (or related person) that, standing alone, shows our assignment was in error. The evidence submitted must, when considered by itself without reference to other contradictory evidence that may be in our possession, be sufficient to persuade a reasonable person that the assignment was erroneous. Examples of evidence that may establish a prima facie case of error include copies of Federal, State, or local government tax records; legal documents such as business incorporation, merger, and bankruptcy papers; health and safety reports filed with Federal or State agencies that regulate mining activities; payroll and other employment business records; and information provided in trade journals and newspapers.

A related person to a signatory operator means a person or entity which as of July 20, 1992, or, if earlier, the time immediately before the coal operator ceased to be in business, was a member of a controlled group of corporations which included the signatory operator, or was a trade or business which was under common control with a signatory operator, or had a partnership interest (other than as a limited partner) or joint venture with a signatory operator in a business within the coal industry which employed eligible beneficiaries, or is a successor in interest to a person who was a related person.

We or *us* refers to the Social Security Administration, or the Secretary of Health and Human Services or the Secretary's delegate, as appropriate.

You as used in this subpart refers to the coal operator (or related person) assigned premium responsibility for a specific beneficiary under the Coal Act.

§ 422.603 Overview of the review process.

Our notice of assignment will inform you as the assigned operator (or related person) which beneficiaries have been assigned to you, the reason for the assignment, and the dates of employment on which the assignment was based. The notice will explain that, if you disagree with the assignment for any beneficiary listed in the notice of assignment, you may request from us detailed information as to the work history of the miner and the basis for the assignment. Such request must be filed with us within 30 days after you receive the notice of assignment, as explained in § 422.604. The notice will also explain that if you still disagree with the assignment after you have received the detailed information, you may submit evidence that shows there is a prima facie case of error in that assignment and request review. Such request must be filed with us within 30 days after you receive the detailed information, as explained in § 422.605. Alternatively, you may request review within 30 days after you receive the notice of assignment, even if you have not first requested the detailed information. In that case, you still may request the detailed information within that 30-day period. (See § 422.606(c) for further details.)

§ 422.604 Request for detailed information.

(a) *General.* After you receive our notice of assignment listing the beneficiaries for whom you have premium responsibility, you may request detailed information as to the work histories of any of the listed miners and the basis for the assignment. Your request for detailed information must:

(1) Be in writing;

(2) Be filed with us within 30 days of receipt of that notice of assignment. Unless you submit evidence showing a later receipt of the notice, we will assume the notice was received by you within 5 days of the date appearing on the notice. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on

the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(3) Identify the individual miners about whom you are requesting the detailed information.

(b) *The detailed information we will provide.* We will send you detailed information as to the work history and the basis for the assignment for each miner about whom you requested such information. This information will include the name and address of each employer for whom the miner has worked since 1978 or since 1946 (whichever period is appropriate), the amount of wages paid by each employer and the period for which the wages were reported. We will send you the detailed information with a notice informing you that you have 30 days from the date you receive the information to submit to SSA evidence of a prima facie case of error (as defined in § 422.602) and request review of the assignment if you have not already requested review. The notice will also inform you that, if you are seeking evidence to make a case of prima facie error, you may include with a timely filed request for review a written request for additional time to obtain and submit such evidence to us. Under these circumstances, you will have 90 days from the date of your request to submit the evidence before we determine whether we will review the assignment.

§ 422.605 Request for review.

We will review an assignment if you request review and show that there is a prima facie case of error regarding the assignment. This review is a review on the record and will not entail a face-to-face hearing. We will review an assignment if:

(a) You are an assigned operator (or related person);

(b) Your request is in writing and states your reasons for believing the assignment is erroneous;

(c) Your request is filed with us no later than 30 days from the date you received the detailed information described in § 422.604, or no later than 30 days from the date you received the notice of assignment if you choose not to request detailed information. Unless you submit evidence showing a later receipt of the notice, we will assume you received the detailed information or the notice of assignment within 5 days of the date shown thereon. We will consider the request to be filed as of the date we receive it. However, if we receive the request after the 30-day period, the postmark date on the envelope may be used as the filing date. If there is no postmark or the postmark is illegible, the filing date will be deemed to be the fifth day prior to the day we received the request; and

(d) Your request is accompanied by evidence establishing a prima facie case of error regarding the assignment. If your request for review includes a request for additional time to submit such evidence, we will give you an additional 90 days from the date of your request for review to submit such evidence to us.

§ 422.606 Processing the request for review.

Upon receipt of your written request for review of an assignment and where relevant, the expiration of any additional times allowed under §§ 422.605(d) and 422.606(c), we will take the following action:

(a) *Request not timely filed.* If your request is not filed within the time limits set out in § 422.605(c), we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(b) *Lack of evidence.* If your request is timely filed under § 422.605(c) but you have not provided evidence constituting a prima facie case of error, we will deny your request for review on that basis and send you a notice explaining that we have taken this action;

(c) *Request for review without requesting detailed information.* If your request is filed within 30 days after you received the notice of assignment and you have not requested detailed information, we will not process your request until at least 30 days after the date you received the notice of assignment. You may still request detailed information within that 30-day period, in which case we will not process your request for review until at least 30 days after you received the detailed information, so that you may submit additional evidence if you wish;

(d) *Reviewing the evidence.* If your request meets the filing requirements of § 422.605 and is accompanied by evidence constituting a prima facie case of error, we will review the assignment. We will review all evidence submitted with your request for review, together with the evidence used in making the assignment. An SSA employee who was not involved in the original assignment will perform the review. The review will be a review on the record and will not involve a face-to-face hearing.

(e) *Original decision correct.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is correct, we will send you a notice explaining the basis for our decision. We will not review the decision again, except as provided in § 422.607.

(f) *Original decision erroneous.* If, following this review of the evidence you have submitted and the evidence in our file, we make a determination that the assignment is erroneous, we will send you a notice to this effect. We will then determine who the correct operator is and assign the affected beneficiary(s) to that coal operator (or related person). If no assigned operator can be identified, the affected beneficiary(s) will be treated as "unassigned." We will notify the UMWA Combined Benefit Fund Trustees of the review decision so that any premium liability of the initial assigned operator can be adjusted.

§ 422.607 Limited reopening of assignments.

On our own initiative, we may reopen and revise an assignment, whether or not it has been reviewed as described in this subpart, under the following conditions:

(a) The assignment reflects an error on the face of our records or the assignment was based upon fraud; and

(b) We sent to the assigned operator (or related person) notice of the assignment within 12 months of the time we decided to reopen that assignment.

[FR Doc. 93–24986 Filed 10–12–93; 8:45 am]
BILLING CODE 4190–29–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–17

[FPMR Temp. Reg. D–17, Suppl. 2]

Extension of Temporary Regulation D–76

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation D–76 to August 26, 1994. Temporary Regulation D–76 provides procedures governing the assignment and utilization of space in Federal or leased facilities under the custody and control of the General Services Administration.

DATES: *Effective Date:* October 13, 1993.
Expiration Date: August 26, 1994.

ADDRESSES: Comments should be submitted to the General Services Administration, (PQ), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT:

Robert E. Ward, Director, Real Estate; Office of Real Property Development, at (202–501–4266).

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to extend Temporary Regulation D–76 until such time as the Final Rule which will supersede it is approved for publication.

GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least cost to society.

List of Subjects in 41 CFR Part 101–17

Administrative practices and procedures, Federal buildings and facilities, Government real property management.

Authority: (Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c)).

In 41 CFR chapter 101, FPMR Temp. Reg. D–76, Supplement 2 is added to the appendix at the end of subchapter D to read as follows:

APPENDIX TO SUBCHAPTER D—TEMPORARY REGULATIONS

* * * * *

Federal Property Management Regulations, Temporary Regulation D–76, Supplement 2

To: Heads of Federal Agencies

Subject: Assignment and Utilization of Space

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation D–76.

2. *Effective date.* October 13, 1993.

3. *Expiration of change.* This supplement expires August 26, 1994.

4. *Expiration of change.* The expiration date in Temporary Regulation D–76 is revised to August 26, 1994.

Roger W. Johnson,

Administrator of General Services

[FR Doc. 93–25021 Filed 10–12–93; 8:45 am]

BILLING CODE 6820–23–M

LEGAL SERVICES CORPORATION

45 CFR Part 1602

Procedures for Disclosure of Information Under the Freedom of Information Act

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Legal Services Corporation's ("LSC" or "Corporation") regulation implementing the Freedom of Information Act ("FOIA") by giving authority to process and to grant or deny requests for records of the Corporation's Office of Inspector General ("OIG") to an official within the OIG. In addition, this final rule also makes other technical and procedural changes intended to reflect the Corporation's internal administrative structure and procedures and to better conform the regulation to the FOIA.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, 202–336–8810.

SUPPLEMENTARY INFORMATION: On July 9, 1993, the Corporation published in the **Federal Register** (58 FR 36910) a proposed rule to amend 45 CFR Part 1602, the Corporation's regulation that implements the Freedom of Information Act. Only one comment was received. Pointing out that a new LSC Board would likely be confirmed by the United States Senate within a few weeks, one comment submitted on behalf of the National Legal Aid and Defender Association and the Project Advisory Group urged that the LSC Board table any action on the rule. The comment also noted that language anticipated to be included in the Corporation's FY 1994 appropriations act would preclude the rule from becoming effective until October 1, 1994. After considering the proposed revisions and the comment received, the LSC Board voted on September 29, 1993, to adopt the proposed amendments as a final rule.

The Inspector General Act of 1978 was amended in 1988 to provide for the statutory establishment of Offices of Inspector General at 33 "designated Federal entities," one of which is LSC. 5 U.S.C. App. 3 Sec. 8E. The primary function of LSC's OIG is to promote economy and efficiency and to prevent and detect fraud, waste and abuse in LSC's programs and operations. Because of the independent and investigative nature of the OIG, OIG records are kept separate from other LSC records, and many are of a confidential nature. Although not required, it is appropriate to amend Part 1602 to give the OIG the authority to process and to grant or deny FOIA requests for OIG records.

Accordingly, this final rule adds a definition for "Office of Inspector General records" as records that are in the exclusive possession and control of the OIG. It also gives the authority to process and to grant or deny a request for OIG records to the Counsel to the Inspector General, and maintains the authority to process and to grant or deny a request for all other Corporation records with the General Counsel. It further makes clear that the General Counsel may delegate this authority to a designee and provides that the Counsel to the Inspector General also may delegate to a designee. Also, the rule gives the Inspector General the authority to decide appeals of requests for OIG records, while the President of the Corporation retains the authority to decide all other appeals.

Although requests for OIG records will be processed by the OIG, the rule provides that all requests be directed initially to the Office of the General Counsel ("OGC"). The General Counsel or his designee is required by the rule to promptly refer to the OIG any request or portion thereof determined to be for OIG records and to send the requester notice of such referral.

In addition, this rule adds the requirement that the OGC consult with the OIG before granting any requests for records or portions of records which originated with the OIG or contain information which originated with the OIG, but which are maintained by other components of the Corporation. Examples of such records would be written reports by OIG personnel; minutes, notes or transcripts of oral reports by the Inspector General to the Board of Directors of the Corporation during closed portions of Board meetings; and travel vouchers prepared by OIG personnel. Such reports, minutes, notes and vouchers all have the potential to reveal the identity of confidential sources or targets and the investigative or audit strategy of the OIG or to otherwise interfere with its ongoing activities. Similarly, this rule requires the OIG to consult with the OGC prior to granting any request.

The rule also amends § 1602.9(6)(iv) by adding language found in the corresponding FOIA exemption that appeared to be unnecessary prior to the establishment of the OIG. The FOIA exemption at 5 U.S.C. 552(b)(7)(D) protects documents that might identify a confidential source, and also, in the case of a criminal investigation, that might identify the information furnished by the source. LSC's current

rule has no language protecting such documents. Because the OIG conducts investigations into criminal activities, addition of the language would appear to be appropriate.

Technical and procedural revisions: This rule also amends Part 1602 by making numerous technical and procedural changes that reflect the Corporation's internal administrative structure and procedures. For example, the rule states that all LSC records are maintained at the Corporation's headquarters in Washington, DC, and that the OGC is responsible for handling FOIA requests, except requests for OIG records. It also deletes references to a central records room to more accurately reflect LSC's practice of maintaining its records in the various divisions of the Corporation.

The fees section has been revised to better reflect categories of employees and to update labor costs. In addition, the rule has been amended to include an assumption that requesters agree to pay up to $25 in charges for services associated with their requests. For requests estimated to exceed $25, the Corporation will consult with the requester prior to processing the request. Also, requests estimated to exceed $25 will not be deemed to be received by the Corporation for purposes of the initial 10-day response period until the requester agrees to pay all fees for services. This amendment allows requesters to reconsider their request before generating fees they may not have anticipated.

In addition, the rule amends the language of Part 1602 that applies to matters specifically exempted from disclosure by statute. *See* § 1602.9(a)(2). The change is intended to better conform the rule to the corresponding FOIA exemption, 5 U.S.C. 552 (b)(3).

List of Subjects in 45 CFR Part 1602

Freedom of Information.

For reasons set out above, Part 1602 of Title 45 of the Code of Federal Regulations be amended as follows:

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

1. The authority citation for Part 1602 is revised to read as follows:

Authority: 5 U.S.C. 552 and 42 U.S.C. 2996d(g).

2. Section 1602.2 is revised to read as follows:

§ 1602.2 Definitions.

As used in this part—

Commercial use request[s] means request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Corporation will look to the use to which a requester will put the documents requested. When the Corporation has reasonable cause to doubt the use to which a requester will put the records sought, or where the use is not clear from the request itself, it will seek additional clarification before assigning the request to a specific category. If still in doubt, the Corporation will make the determination based on the factual circumstances surrounding the request, including the identity of the requester.

Duplication means the process of copying a document to send to a FOIA requester. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, and an institution of professional or vocational education which operates a program or programs of scholarly research.

FOIA means the Freedom of Information Act, 5 U.S.C. 552.

Labor charges means those costs which the Corporation incurs in searching for, reviewing, and duplicating records to respond to a FOIA request. A schedule of labor charges appears at § 1602.13(e)(1).

Non-commercial scientific institution means an institution that is not operated on a "commercial" basis and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

Office of Inspector General records means those records as defined generally in this section which are exclusively in the possession and control of the Office of Inspector General of the Legal Services Corporation.

Records means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include, *inter alia*, books, magazines, or other materials acquired solely for library purposes.

Representative of the news media means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they will be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

Review means the process of examining documents located in response to a commercial use request to determine whether any portion of any such document may be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search means all the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The search will be conducted in the most efficient and least expensive manner. Searches may be done manually or by computer using existing programming.

3. Section 1602.4 is revised to read as follows:

§ 1602.4 Location of Corporation headquarters.

The Corporation's headquarters are located at 750 First Street, NE., Washington, DC 20002–4250. The telephone number for the Corporation's headquarters is (202) 336–8800.

4. Section 1602.5 is revised to read as follows:

§ 1602.5 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.6(b) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters, located at the address stated in § 1602.4.

5. Section 1602.6 is added to read as follows:

§ 1602.6 Records available.

(a) The Corporation will maintain its records as described in paragraph (b) of this section at its headquarters, located at the address stated in § 1602.4, during the regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part.

(b) Subject to the limitation stated in paragraph (c) of this section, the following records will be available:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.5.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public.

(d) Certain records made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion.

6. Section 1602.7 is revised to read as follows:

§ 1602.7 Procedures for public inspection of records.

Any member of the public may inspect or copy records regularly maintained by the Corporation at the Corporation during regular business hours. Because it will sometimes be impossible to produce records or copies of them on short notice, a person who wishes to inspect or copy Corporation records is advised to arrange a time in advance, by telephone or letter request made to the Office of the General Counsel at the address and telephone number stated in § 1602.4. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate the specific date when they wish to inspect the records. The Corporation will endeavor to advise the requester as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

7. Section 1602.8 is amended by revising paragraphs (a), (b)(3), (4) and (5), (c) introductory text, and (d) to read as follows:

§ 1602.8 Availability of records on request.

(a) In addition to the records described in section 1602.6, the Corporation will make all other Corporation records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9.

(b) * * *

(3) The Corporation is not required to create a record or to perform research to satisfy a request for information.

(4) Requests for records under this section should be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request" and should be addressed to the LSC Office of the General Counsel at the address stated in § 1602.4. Any request not marked and addressed as specified in this paragraph will be so marked by Corporation personnel as soon as it is properly identified, and will be forwarded immediately to the Office of the General Counsel. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until it is received by the Office of the General Counsel. Upon receipt of an improperly addressed request, the General Counsel or his designee shall notify the requester of the date on which the time period began.

(5) All requests should identify the records sought with reasonable specificity and should indicate the number of copies desired. The Corporation may require that fees be paid in advance, in accordance with § 1602.13(i), and the Corporation will advise a requester as promptly as possible if the fees are estimated to exceed $25 or any limit indicated by the requester. If a waiver or reduction of fees is requested, the grounds for such request as set out in § 1602.13(f) should be included in the letter.

(c) The General Counsel or his designee, upon request for any records made in accordance with this part, except in the case of a request for Office of Inspector General records, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. If the General Counsel or his designee determines that a request or portion thereof is for Office of Inspector General records, the General Counsel or his designee shall promptly refer the request or portion thereof to the Office of Inspector General and send notice of such referral to the requester. In such case, the Counsel to the Inspector General or his designee shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 10 working days after receipt of such request, except for unusual circumstances, in which case the time limit may be extended for not more than 10 working days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

* * * * *

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the General

Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall nevertheless continue to process the request. On expiration of the time limit, the General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of the requester's right to treat the delay as a denial and to appeal to the President of the Corporation, or to the Inspector General of the Corporation, in accordance with § 1602.12. The General Counsel or his designee, and/or the Counsel to the Inspector General or his designee, may ask the requester to forego appeal until a determination is made.

* * * * *

8. Section 1602.9 is amended by revising paragraphs (a)(2) and (6)(iv) to read as follows:

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) * * *

(2) Matter which is specifically exempted from disclosure by statute other than section 552b of the FOIA, provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issues, or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

* * * * *

(6) * * *

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, information furnished by a confidential source;

* * * * *

9. Section 1602.10 is revised to read as follows:

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Corporation. The General Counsel or his designee, and the Counsel to the Inspector General or his designee, are authorized to grant or deny requests under this part. In the absence of a Counsel to the Inspector General, the Inspector General shall name a designee who will be authorized to grant or deny requests under this part and who will perform all other functions of the Counsel to the Inspector General under this regulation. The General Counsel or his designee shall consult with the Office of Inspector General prior to granting any request for records or portions of records which originated with the OIG, or which contain information which originated with the OIG, but which are maintained by other components of the Corporation. The Counsel to the Inspector General or his designee shall consult with the Office of the General Counsel prior to granting any request for records.

10. Section 1602.12 is revised to read as follows:

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within 90 days by writing to the President of the Corporation or, in the case of a denial of a request for Office of Inspector General records, the Inspector General, at the Corporation's headquarters, located at the address stated in § 1602.4. The envelope and letter should be clearly marked "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the Inspector General, or their designees, for this purpose.

(c) The decision of the President or the Inspector General on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requester, the matters described in § 1602.11(a) (1) through (4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requester within 20 working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed 10 days. The decision of the President or the Inspector General shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.6(b).

11. Section 1602.13 is revised to read as follows:

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) For commercial use requests, fees shall be limited to reasonable standard charges for document search, review and duplication.

(c) When records are not sought for commercial use and the request is made by a representative of the news media or by an educational institution or a non-commercial scientific institution whose purpose is scholarly or scientific research, fees shall be limited to reasonable standard charges for document duplication after the first 100 pages.

(d) For all other requests, fees shall be limited to reasonable standard charges for search time after the first 2 hours and duplication after the first 100 pages.

(e) The schedule of charges for services regarding the production or disclosure of Corporation records is as follows:

(1) Manual search for and review of records will be billed at the following labor charges:

(i) Salary levels 1–4: $14 per hour;

(ii) Salary levels 5–6: $25 per hour;

(iii) Salary level 7—unclassified: $34 per hour;

(iv) Charges for search and review time less than a full hour will be billed by quarter-hour segments;

(2) Computer time: Actual charges as incurred;

(3) Duplication by paper copy: $0.10 per page;

(4) Duplication by other methods: actual charges as incurred;

(5) Certification of true copies: $1.00 each;

(6) Packing and mailing records: no charge for regular mail;

(7) Special delivery or express mail: actual charges as incurred.

(f) Fees will be waived or reduced below the fees established under paragraph (e) of this section if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Corporation and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information "is in the public interest because it is likely to contribute significantly to public

understanding of the operations or activities of the Corporation," the Corporation will consider the following four criteria:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the Corporation";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of Corporation operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of Corporation operations or activities.

(2) In order to determine whether disclosure of the information "is not primarily in the commercial interest of the requester," the Corporation will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) These fee waiver/reduction provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(g) No fee will be charged under this section if the cost of routine collection and processing of the fee payment is likely to equal or exceed the amount of the fee charged. That cost is currently $6.50.

(h) Requesters must agree to pay all fees charged for services associated with their requests. The Corporation will assume that requesters agree to pay all charges for services associated with their requests up to $25 unless otherwise indicated by the requester. For requests estimated to exceed the $25 amount, the Corporation will first consult with the requester prior to processing the request, and such requests will not be deemed to have been received by the Corporation until the requester agrees in writing to pay all fees charged for services.

(i) No requester will be required to make an advance payment of any fee unless:

(1) That requester has previously failed to pay a required fee (within 30 days of the date of billing), in which case an advance deposit of the full amount of the anticipated fee together with the fee then due plus interest accrued may be required. The request will not be deemed to have been received by the Corporation until such payment is made;

(2) The Corporation determines that an estimated fee will exceed $250, in which case the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. Such notification shall be transmitted as soon as possible, but in any event within five working days of receipt by the Corporation, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost. The request will not be deemed to have been received by the Corporation for purposes of the initial 10-day response period until an advance payment of the entire fee is made.

(j) Interest will be charged to those requesters who fail to pay the fees charged. Interest will be assessed on the amount billed, starting on the 31st day following the day on which the billing was sent. The rate charged will be as prescribed in 31 U.S.C. 3717.

(k) If the Corporation reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the Corporation shall aggregate such requests and charge accordingly.

(l) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requester or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Dated: October 7, 1993.

Victor M. Fortuno,

General Counsel.

[FR Doc. 93–25087 Filed 10–12–93; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87–08; Notice 9]

RIN 2127–AD39

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires lap belts or the lap belt portion of lap/shoulder belts to be capable of being used to tightly secure child safety seats, without the necessity of the user's attaching any device to the seat belt webbing, retractor, or any other part of the vehicle in order to achieve that purpose. A vehicle's compliance with this requirement is to be determined by "locking" the belt with whatever means is provided for that purpose, measuring the length of belt webbing between two points on the belt assembly, pulling on the "locked" belt with a 50 pound force, and while the force is pulling on the belt, again measuring the distance between the two points on the belt assembly. The difference between the two measurements for the locked belt is used to determine if the safety belt assembly complies with this requirement. This final rule will ensure that safety belts are both comfortable for adult occupants and capable of tightly securing child safety seats.

DATES: The amendments made in this rule are effective September 1, 1995.

Any petitions for reconsideration must be received by NHTSA no later than November 12, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Daniel Cohen, Chief, Frontal Crash Protection Division, NHTSA, NRM–12, room 5320, 400 Seventh Street, SW., Washington, DC 20590. Mr. Cohen can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION: NHTSA published a supplementary notice of proposed rulemaking (SNPRM) on December 6, 1991 proposing to require that lap belts or the lap belt portion of

lap/shoulder belts be capable of tightly securing child safety seats, without the necessity of the user's attaching any device to the seat belt webbing, retractor, or any other part of the vehicle in order to achieve that purpose (56 FR 63914). A history of this rulemaking can be found in that notice. A vehicle's compliance with the requirements proposed in the SNPRM would have been determined by "locking" the belt with whatever means is provided for that purpose, measuring the length of belt webbing between two points on the belt assembly, pulling on the "locked" belt with a 50 pound force, and while the force is pulling on the belt, again measuring the distance between the two points on the belt assembly. The difference between the two measurements for the locked belt would have been used to determine if the safety belt assembly complied with this proposed requirement. This proposed requirement was referred to as the "lockability requirement."

The lockability requirement evolved from the public reaction to the movement at low vehicle speeds of child safety seats held by safety belts that use an emergency locking retractor (ELR). This movement gave rise to questions and concerns on the part of the public about the safety and effectiveness of child seats when used with such belts. In particular, parents of small children expressed concerns that child safety seats move about in response to relatively routine driving maneuvers. They voiced these concerns via NHTSA's Hotline telephone service, generally reporting dissatisfaction that they are unable to adjust the safety belt webbing so that the child safety seat will remain fixed in position during these driving maneuvers.

The lockability issue has been a priority concern among those in the business of child passenger safety. Much of the state and local advocates' time is spent either answering parents' questions or in performing outreach activities designed to reduce the problems associated with the lockability of safety belts. Newsletter articles, workshop agendas, and public information materials from groups such as the Physicians for Automotive Safety, the National Child Passenger Safety Association, and the American Academy of Pediatrics have consistently included lockability-related information since the early 1980's.

Given these questions and concerns on the part of the public, NHTSA believes that some parents may not be as likely to use child safety seats if they are concerned about the seat's stability during both normal and emergency driving conditions. Providing lockability for child safety seats should help mitigate these concerns, and therefore, increase usage of child safety seats. In 1990, 435 unrestrained children aged 0–4 died in motor vehicle crashes. Child safety seats are estimated to be approximately 53 percent effective in preventing fatalities among infants and toddlers. (This effectiveness is a weighted average of the individual safety seat effectiveness estimates for infants and toddlers.) If only 10 percent of these cases had been in child safety seats, over 20 fatalities could have been prevented. Thus, the potential for preventing death and injury to young children is clearly significant.

NHTSA received 17 comments on the SNPRM. In general, commenters supported the need for a lockability requirement, however, commenters did disagree with some aspects of the proposed test procedure and with the need for this requirement at the right front seating position. All of the comments were considered while formulating this final rule, and the most significant comments are addressed below.

Vehicles Subject to this Proposal

The SNPRM proposed that the lockability requirements apply to all vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less. Vehicles with a higher GVWR were excluded because they are much less frequently used to transport children in child safety seats.

In its comments, General Motors (GM) requested exclusion of certain vehicles with a GVWR of 10,000 pounds or less that it believes are also unlikely to be used to transport children. Specifically, GM requested exclusion of walk-in type vans and vehicles manufactured to be sold exclusively to the U.S. Postal Service. The agency agrees that these vehicles are also unlikely to be used for transporting children in child safety seats and therefore has excluded these vehicles in the final rule.

Seating Positions Subject to this Proposal

The SNPRM proposed that all seating positions other than the driver's position be required to comply with the lockability requirement. In the SNPRM, NHTSA tentatively concluded that it would not be appropriate to exclude seating positions with automatic safety belts from the lockability requirements. However, the agency proposed to permit the use of a separate manual lap belt as the means of achieving lockability at seating positions equipped with an automatic belt.

In response to the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240), NHTSA is currently proceeding to mandate air bags and manual lap/shoulder safety belts at all front outboard seating positions. NHTSA is currently proceeding with the rulemaking to implement these requirements which will require all 1998 model year passenger cars and all 1999 model year light trucks and multipurpose passenger vehicles to have an air bag and a manual lap/shoulder belt at each front outboard seating position. Because of these requirements and the lack of the quantification of a significant safety problem, NHTSA has decided that it would be an undue financial burden to require manufacturers to redesign their automatic safety belt systems to provide lockability when those systems will be installed in vehicles for only a few more years before air bags become mandatory. Therefore, automatic safety belt systems have been excluded from the requirements of this final rule.

Test Procedure

The SNPRM proposed a modified test procedure which required buckling the seat belt assembly, "locking" the safety belt in accordance with the manufacturer's instructions in the vehicle owner's manual, locating any point on the safety belt buckle or emergency release buckle, locating any point on the attachment hardware or retractor assembly on the other end of the safety belt assembly, adjusting the lap belt or lap belt portion of the safety belt assembly so that the length of webbing between these two points does not exceed 30 inches, pulling on the "locked" belt with a 50 pound force using a webbing tension pull device, and, with the force still pulling on the belt, measuring the distance between the two points again. The difference between the two measurements could not exceed two inches. The SNPRM also included language stating that inversion, twisting or otherwise deforming the safety belt to provide lockability would not be permitted to satisfy this proposed lockability requirement.

1. Force Application

GM, Ford, Nissan, Honda and Toyota asked for a text fixture to simulate an actual child restraint system, instead of the webbing tension pull device. As explained in the SNPRM, the agency considered incorporating a test fixture or body block into the lockability test procedure when developing the proposal. The agency determined that such a modification to the test

procedure would make it unnecessarily complex. Except as explained below, the commenters did not submit any new information to persuade the agency that this position is incorrect.

Ford commented that a single load applied at the center of the belt webbing loop is not representative of the load applied by a child seat. If the agency again declined to use a test fixture, Ford asked the agency to specify a load application using two webbing tension pull devices spaced 12 inches apart laterally. The webbing tension pull device is not intended to simulate the interaction of a child seat and the safety belt. Application of a single load is simple and represents a worst case condition. Ford's suggestion of a double load application complicates the test procedure without any demonstrated safety benefit. Therefore, the agency has not adopted Ford's suggestion.

Nissan requested use of a test fixture because "the seat cushion undergoes greater degrees of compression due to loading by the buckle and webbing without the child restraint in place than it does when the restraint is in place." Toyota included a video with its comments to demonstrate this phenomenon. As demonstrated in the video, the webbing rotates downward when the required load is applied, compressing the seat cushion, and resulting in a greater apparent length of the webbing.

In order to minimize the possibility of false test results due to seat cushion compression, the agency has modified the test procedure. The test procedure in this rule specifies that a pre-load of 10 pounds be applied before measuring the safety belt webbing. This will ensure that any rotation of the webbing and seat compression has occurred prior to the measurement.

Volvo, Ford, and Toyota recommended changes in the regulatory language specifying how the load is applied. All three commenters stated that the point "equidistant between points A and B" may be asymmetrical in relation to the seat when the belt is buckled. Volvo recommended "that the line of force should be in a vertical plane, parallel to the longitudinal axis of the car, and passing through the Seating Reference Point." NHTSA's language in the SNPRM was intended to specify that the load be applied at the center of the seat. NHTSA agrees that Volvo's suggestion is clearer, and therefore, regulatory language has been changed to adopt this suggestion.

2. Test Force

Cosco questioned the adequacy of the 50 pound test force, stating its belief that centrifugal force, not the direct force applied during the test procedure, is responsible for problems with child seats tipping over. Cosco cited anecdotal evidence of experiences in which a 15 pound child seat with a 35 pound child in it (total weight 50 pounds) tipped over notwithstanding the fact that it was restrained in a belt equipped with a retractor that was designed to lock when a 45 pound force was applied. Cosco believes that this experience demonstrates that a 50 pound test force is inadequate to ensure that child safety seats are tightly secured.

NHTSA disagrees and believes that the situation cited by Cosco is a result of slack in the safety belt system. An ELR equipped safety belt will gradually allow slack to be introduced during routine driving maneuvers. Because of this slack in the belt, the child seat can tip over without applying sufficient load to lock the belt. Therefore, NHTSA is not persuaded by Cosco's argument and has retained the 50 pound force.

3. 30 Inch Limit

Ford and Toyota stated that the 30 inch limit on the length of webbing specified in the test procedure may be insufficient to buckle the belt in some designs and asked that this limit be deleted. Volvo also asked for this limit to be deleted as it did not appear to have any effect on lockability.

NHTSA included the 30 inch limit to preclude belt designs that comply with the lockability test solely because all of the webbing has been spooled off the retractor. If all of the webbing were spooled off the retractor at the beginning of the test, the belt would appear to be "locked" because the webbing would be at its maximum extension and no slack could possibly occur. To prevent this condition, the test was designed to demonstrate compliance with the lockability requirement at less than full extension of the belt webbing. However, based on these comments, NHTSA has amended the regulatory language to allow any length of webbing which is no more than 5 inches less than the maximum length of the webbing.

The agency has also added language requiring at least 3 inches of webbing remain on the retractor after application of the 50 pound load. Compliance with the lockability requirement is determined by measuring the difference between the length of the webbing after the pre-load is applied and the length of the webbing after the 50 pound load is applied. If all the webbing were to spool off the retractor when the pre-load was applied, the design would appear to comply with the lockability requirement, but only because there was not any webbing remaining on the retractor. The additional requirement that at least 3 inches of webbing remain on the retractor after the test will ensure that the belt design achieves lockability by virtue of some features other than spooling out all the webbing from the retractor.

4. Two-inch Spool-out Limit

Advocates for Highway and Auto Safety (Advocates), Center for Auto Safety (CAS) and Cosco objected to the increase from one inch to two inches of allowable webbing spool-out in the SNPRM based on their belief that this would allow too much movement of a child safety to allay parent's concerns. In addition, Cosco stated that this would allow up to five inches of forward movement of a child seat. Cosco's calculation was arrived at by adding the two inches allowed in the SNPRM with the two inches allowed by the latest draft of the SAE J-1819 test criteria.

NHTSA believes that Cosco's calculations are based on erroneous assumptions. First, the test procedure in this final rule is a separate test from the SAE test criteria. The two inches specified in the rule and the two inches specified by SAE are not cumulative. Second, Cosco also added another inch for belt stretch in an accident. Comparisons to belt performance in accidents are not appropriate as this requirement is intended to prevent slack during normal driving, not in accidents.

As explained in the SNPRM, the one inch limit proposed in the NPRM reflected the agency's judgment at that time that any spool-out in excess of one inch would adversely affect the public's perception of the effectiveness of child seats. At the same time, the agency recognized that zero webbing spool-out would be difficult to achieve.

Based upon comments submitted in response to the NPRM, the agency decided to reexamine the amount of webbing spool-out that should be allowed. In developing the original proposal, the agency had concluded that a very small amount of belt slack would theoretically allow a large amount of forward motion of a child seat. To test this conclusion, the agency installed a "typical" child seat in a test vehicle and introduced known amounts of slack to determine how much movement occurred. Based upon these tests, the agency determined that two inches of slack permitted about two inches of forward movement, about half what the agency had expected would occur. Based on this additional information about the relationship between belt slack and forward movement of child seats, the agency tentatively concluded

in the SNPRM that two inches of belt increase in this lockability test would be an appropriate limit.

The commenters to the SNPRM believe that the two inch limit would decrease the safety benefit of lockability, however, the commenters did not submit any information to support this claim. Therefore, the agency has retained the two inch limit.

5. Belts Subject to Testing

The agency has added language excluding belts which have no retractor, and belts equipped only with an automatic locking retractor (ALR) from the lockability requirements. These belts automatically provide lockability and therefore subjecting them to testing would be unnecessary. The agency notes that it is not excluding dual-mode retractors incorporating both an ALR and an ELR since the consumer must take a specific action to convert the retractor to an ALR and provide lockability.

6. "Nominal Forward Facing Position"

The SNPRM specified that adjustable seats should be adjusted to the "manufacturer's specified nominal forward facing position." The Insurance Institute for Highway Safety (IIHS) requested a definition of this term in the final rule. NHTSA believes that belts should provide lockability at any adjustment position of the seat. Therefore, the regulatory language has been amended to specify that the seat is in any adjustment position.

Belt Labeling and Owner's Manual Information

The SNPRM proposed to require a vehicle's owner's manual include operating instructions if a vehicle user had to take any action to activate the lockability feature of the safety belt. The proposed regulatory language required these instructions to be in the form of "a step-by-step procedure with a diagram or diagrams showing how to activate the locking feature."

Several commenters requested a label be required on the safety belt and/or additional information in the owner's manual concerning lockability. Cosco requested a statement in the owner's manual that the belt system meet the lockability requirement. IIHS requested operating instructions be required on the belt, in addition to the instructions in the owner's manual. CAS requested at least three different warning labels in the vehicle stating that a child could be injured or killed in a car if the child restraint is secured with an automatic belt. Advocates requested a label on all automatic belts warning users that a manual belt is provided to secure a child restraint.

VW stated that the owner's manual requirements were too restrictive. VW stated that some systems may not be easily described in a "step-by-step" procedure (such as a locking latch plate), while other systems may not need a diagram (such as an ALR/ELR retractor). VW asked for a more general requirement for a clear description by whichever method is most appropriate.

NHTSA has concluded that the owner's manual instructions are sufficient. Many of the requests for additional warnings are concerned with automatic belts which have been excluded from the final rule. NHTSA agrees with VW that the SNPRM language may be too specific and has adopted a more general requirement in the final rule.

Leadtime

The SNPRM proposed an effective date of September 1, 1993. Several commenters requested an extension of this date to develop means to provide lockability for automatic belts. As stated previously, automatic belts have been excluded from these requirements. However, to allow adequate leadtime after publication, the effective date has been extended to September 1, 1995.

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that, it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

The one-time redesign and testing costs of this final rule are expected to be minimal because the hardware to achieve lockability is currently available and, in many cases, already being used (for example, locking latch plates or convertible ALR/ELR retractors). The agency estimates that the annual increased consumer costs associated with the lockability requirement are between $30.2 million and $55.0 million. This reflects estimated costs of between $0.75 and $1.50 per seating position for locking latch plates as well as minor added fuel consumption costs. NHTSA estimates that about 79 percent of all light passenger vehicles will require a locking latch plate at the front outboard position, and that about 56 percent will require one at the rear outboard positions.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA estimates that no significant impacts on vehicle price or sales will be associated with this final rule. Therefore, there will be no significant impacts on small manufacturers, organizations or jurisdictions.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for the purpose of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this final rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this final rule does not have sufficiently significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by adding a new section S7.1.1.5 to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection.

* * * * *

S7.1.1.5 *Passenger cars, and trucks, buses, and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1995 shall meet the requirements of S7.1.1.5(a), S7.1.1.5(b) and S7.1.1.5(c).*

(a) Each designated seating position, except the driver's position, and except any right front seating position that is equipped with an automatic belt, that is in any motor vehicle, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service, and that is forward-facing or can be adjusted to be forward-facing, shall have a seat belt assembly whose lap belt portion is lockable so that the seat belt assembly can be used to tightly secure a child restraint system. The means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not consist of any device that must be attached by the vehicle user to the seat belt webbing, retractor, or any other part of the vehicle. Additionally, the means provided to lock the lap belt or lap belt portion of the seat belt assembly shall not require any inverting, twisting or otherwise deforming of the belt webbing.

(b) If the means provided pursuant to S7.1.1.5(a) to lock the lap belt or lap belt portion of any seat belt assembly makes it necessary for the vehicle user to take some action to activate the locking feature, the vehicle owner's manual shall include a description in words and/or diagrams describing how to activate the locking feature so that the seat belt assembly can tightly secure a child restraint system and how to deactivate the locking feature to remove the child restraint system.

(c) Except for seat belt assemblies that have no retractor or that are equipped with an automatic locking retractor, compliance with S7.1.1.5(a) is demonstrated by the following procedure:

(1) With the seat in any adjustment position, buckle the seat belt assembly. Complete any procedures recommended in the vehicle owner's manual, pursuant to S7.1.1.5(b), to activate any locking feature for the seat belt assembly.

(2) Locate a reference point A on the safety belt buckle. Locate a reference point B on the attachment hardware or retractor assembly at the other end of the lap belt or lap belt portion of the seat belt assembly. Adjust the lap belt or lap belt portion of the seat belt assembly pursuant to S7.1.1.5(c)(1) as necessary so that the webbing between points A and B is at the maximum length allowed by the belt system. Measure and record the distance between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(3) Readjust the belt system so that the webbing between points A and B is at any length that is 5 inches or more shorter than the maximum length of the webbing.

(4) Apply a pre-load of 10 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. Apply the pre-load in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal. Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly while the pre-load is being applied.

(5) Apply a load of 50 pounds, using the webbing tension pull device described in Figure 5 of this standard, to the lap belt or lap belt portion of the seat belt assembly in a vertical plane parallel to the longitudinal axis of the vehicle and passing through the seating reference point of the designated seating position whose belt system is being tested. The load is applied in a horizontal direction toward the front of the vehicle with a force application angle of not less than 5 degrees nor more than 15 degrees above the horizontal at an onset rate of not more than 50 pounds per second. Attain the 50 pound load in not more than 5 seconds. If webbing sensitive emergency locking retroactive are installed as part of the lap belt assembly or lap belt portion of the seat belt assembly, apply the load at a rate less than the threshold value for lock-up specified by the manufacturer. Maintain the 50 pound load for at least 5 seconds before the measurements specified in S7.1.1.5(c)(6) are obtained and recorded.

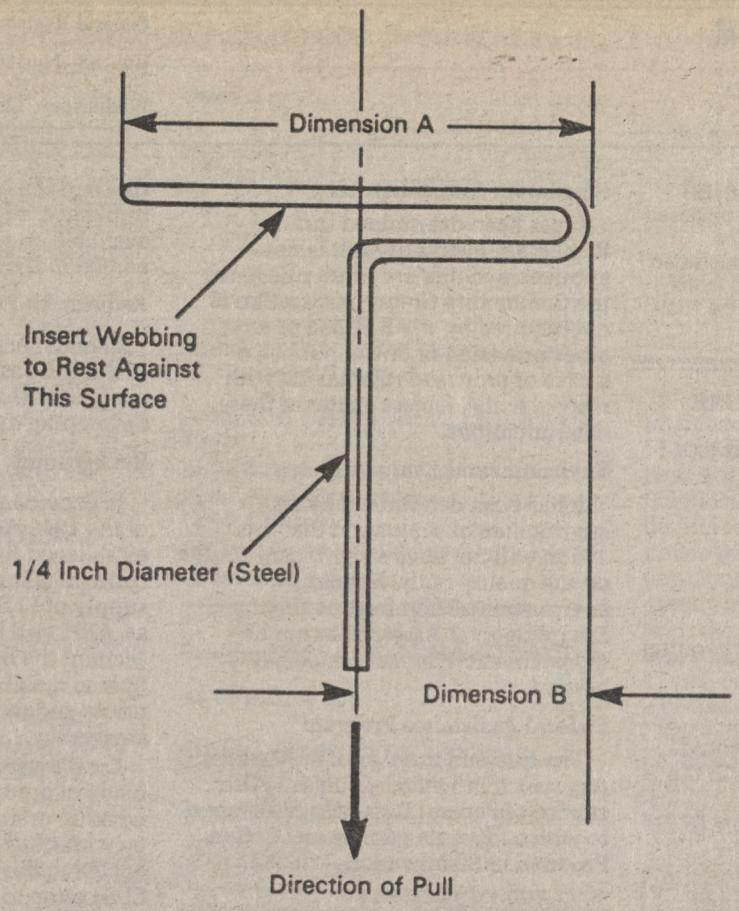
(6) Measure and record the length of belt between points A and B along the longitudinal centerline of the webbing for the lap belt or lap belt portion of the seat belt assembly.

(7) The difference between the measurements recorded under S7.1.1.5(c) (6) and (4) shall not exceed 2 inches.

(8) The difference between the measurements recorded under S7.1.1.5(c) (6) and (2) shall be 3 inches or more.

* * * * *

3. A new Figure 5 is added at the end of § 571.208, to appear as follows:



Dimension A - Width of Webbing Plus 1/2 Inch

Dimension B - 1/2 of Dimension A

Figure 5. - Webbing Tension Pull Device

Issued on October 7, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–25053 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD22

1994 Extra Long Staple Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage (ARP) for the 1993 crop of extra long staple (ELS) cotton. This action is required by section 103(h)(5) of the Agricultural Act of 1949 (the 1949 Act), as amended.

DATES: Comments must be received on or before November 16, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), room 3754–S, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Broussard, Fibers and Rice Analysis Division, ASCS, USDA, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–9222.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that an annual effect on the economy of $100 million or more will not result from implementation of the provisions of this proposed rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

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

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are: Cotton Production Stabilization—10.052.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of the proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

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

Paperwork Reduction Act

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

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Request for Public Comment

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

Background

In accordance with section 103(h)(5) of the 1949 Act, an ARP may be established for the 1994 crop of ELS cotton if it is determined that the total supply of ELS cotton, in the absence of an ARP, will be excessive, taking into account the need for an adequate carry-over to maintain reasonable and stable prices and to meet a national emergency.

Land diversion payments also may be made to producers of ELS cotton, whether or not an ARP for ELS cotton is in effect, if needed to assist in adjusting the total national acreage of ELS cotton to desirable goals. A paid land diversion has not been considered because, given the existing supply/use situation, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (including a zero percentage reduction) to the acreage base for each ELS cotton-producing farm. Producers who knowingly produce ELS cotton in excess of the permitted acreage for the farm are ineligible for ELS cotton loans and payments with respect to that farm.

Based on 1994 supply/use estimates as of August 1993, four options are considered. However, because of changes in the 1994 supply/use situation that may develop between now and the ARP announcement date, the actual ARP level may be different from the options discussed in this rule. The 1994 ARP options considered are:

Option 1. 15-percent ARP.
Option 2. 20-percent ARP.
Option 3. 25-percent ARP.
Option 4. 30-percent ARP.

The estimated impacts of the ARP options are shown in the following table.

EXTRA LONG STAPLE COTTON SUPPLY/DEMAND ESTIMATES

Item	Option 1	Option 2	Option 3	Option 4
ARP (%)	15	20	25	30
Participation (%)	54	52	50	45
Planted Acres (thousand)	205	200	195	193
Production (thousand bales)	400	392	384	382
Domestic Use (thousand bales)	65	65	65	65
Exports (thousand bales)	365	360	355	355
Ending Stocks (thousand bales)	140	137	134	132
Stocks to Use Ratio	0.326	0.322	0.319	0.314
Deficiency Payments ($ thousand)	9,710	8,243	6,936	5,827

Accordingly, comments are requested as to the 1994 ARP for ELS cotton. The final ARP level will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

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

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

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

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Revising paragraphs (a)(5)(ii) and (a)(5)(iii),

B. Adding paragraph (a)(5)(iv),

C. Adding paragraph (d)(4)(v) (see paragraph (d)(4) as proposed at regulation published on October 12, 1993; and regulations published at 58 FR 41641 (August 5, 1993) and 58 FR 51934 (October 5, 1993)) to read as follows:

§1413.54 Acreage reduction program provisions.

(a) * * *

(5) * * *

(ii) 1992 ELS cotton, 5 percent;

(iii) 1993 ELS cotton, 20 percent; and

(iv) 1994 ELS cotton shall be within the range of 15 to 30 percent, as determined and announced by CCC.

* * * * *

(d) * * *

(4) * * *

(v) Shall not be made available to producers of ELS cotton.

* * * * *

Signed at Washington, DC, on October 6, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–25037 Filed 10–12–93; 8:45 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Establishment of Size Standards

AGENCY: Small Business Administration.

ACTION: Proposed rulemaking; reopening of comment period.

SUMMARY: On August 24, 1993, the Small Business Administration (SBA) published a proposed rule which amends the Small Business Size Regulation to implement the Small Business Credit and Business Opportunity Enhancement Act of 1992. The proposed regulations would set forth the limited circumstances under which the Secretary of a department of the head of a Federal agency may prescribe, for the use of such department or agency, a numerical size standard for determining whether or not an entity is small. The proposed rule established a final date for comments to be submitted to SBA of on or before September 23, 1993. SBA is reopening that comment period for an additional 30 days.

DATES: Written comments must be received on or before November 12, 1993.

ADDRESSES: Written comments should be submitted to Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 Third Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson or Ajoy Sinha, (202) 205–6618.

SUPPLEMENTARY INFORMATION: Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law No. 102–366, 106 Stat. 986, amends section 3(a) of the Small Business Act (15 U.S.C. 632(a)) to delineate the limited circumstances under which a Secretary of a department or the head of a Federal agency may prescribe, for the use of such department or agency, a numerical size standard for determining whether or not an entity is small. SBA published a proposed rule describing the requirements that a department Secretary or Federal agency head must meet in the **Federal Register**, on August 24, 1993, at 58 FR 44620.

This notice will reopen the comment period to allow Federal departments and agencies adequate time to analyze the proposed rule and its implications and effects for their use. Therefore, the comment period on the proposed rule is hereby reopened and SBA will accept comments on the proposed rule until November 12, 1993.

Dated: October 4, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–25060 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–144–AD]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A 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 British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. This proposal would require

modification of the electrical power supply system. This proposal is prompted by a report that a single phase fault current can cause sequential failure of all onboard main electrical generators. The actions specified by the proposed AD are intended to prevent such failures and subsequent loss of electrical power sources onboard the airplane.

DATES: Comments must be received by December 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–144–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 British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; 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–144–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–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes. The CAA advises that a single phase fault current (electrical short), having a magnitude of between 175 and 270 amps, can activate the Generator Control Unit (GCU) undervoltage protection circuit rather than the GCU overcurrent protection circuit. Consequently, all the main generators installed on the airplane would shut down sequentially. The subject single phase fault current can occur in certain electrical equipment powered by a 3-phase electrical power supply; their cause has not been determined. This condition, if not corrected, could result in sequential failure of all onboard main electrical generators and subsequent loss of electrical power sources onboard the airplane.

British Aerospace has issued Service Bulletin SB.24–91–70488B&C, Revision 1, dated March 29, 1993, that describes procedures for modifying the electrical power supply system (Modification HCM70488B). This modification entails replacing the currently-installed GCU's with improved GCU's. The improved GCU's contain an undervoltage protection circuit which has been reconfigured to detect average voltage rather than lowest phase voltage. Installation of improved GCU's will provide improved control of the electrical power supply system's voltage and current. The CAA classified part of this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, 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 modification of the electrical power supply system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 49 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 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 $10,780, or $220 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 "significant regulatory action" under Executive Order 12866; (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:

British Aerospace: Docket 93–NM–144–AD.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes, on which Modification HCM70488B has not been accomplished, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent sequential failure of all onboard main electrical generators and subsequent loss of electrical power sources onboard the airplane, accomplish the following:

(a) Within 3,100 hours time-in-service after the effective date of this AD, modify the electrical power supply system by installing Modification HCM70488B in accordance with British Aerospace Service Bulletin SB.24–91–70488B&C, Revision 1, dated March 29, 1993.

(b) 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.

(c) 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 October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25042 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–135–AD]

Airworthiness Directives; Canadair Model Turboprop CL–215–6B11 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 Canadair Model CL–215–6B11 series airplanes. This proposal would require inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary; and the eventual replacement of all struts with new struts. This proposal is prompted by reports of failures of these rear engine mount struts due to cracking that was caused by rosette welds on the shank of the struts not achieving full weld penetration during manufacture. The actions specified by the proposed AD are intended to prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure.

DATES: Comments must be received by December 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–135–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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087 Station A, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Jeff Casale, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

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–135–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–135–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–215–6B11 series airplanes. Transport Canada Aviation advises that five reports have been received indicating that the rear engine mount struts have failed on de Havilland, Inc., Model DHC–8–100, and –300 series airplanes. Subsequent investigation revealed that cracking had initiated at one of the rosette welds on the shank of the strut just above the bearing. This cracking was caused by the welds not achieving full weld penetration during manufacture. This condition, if not detected and corrected in a timely manner, may lead to the failure of the struts, which could subsequently result

in reduced structural integrity of the nacelle and engine support structure.

The engine support structures on the de Havilland Model DHC–8–100 and –300 series airplanes are similar in design to those installed on certain Canadair Model CL–215–6B11 series airplanes. Therefore, certain Canadair Model CL–215–6B11 series airplanes may be subject to the same unsafe condition revealed on the de Havilland models. (The FAA is considering similar rulemaking action applicable to de Havilland Model DHC–8–100 and –300 series airplanes.)

Canadair has issued Model CL–215–6B11 Alert Service Bulletin 215–A3040, dated September 2, 1992, that describes procedures for repetitive visual inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–92–22, dated November 17, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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 repetitive visual inspections to detect cracking in the rear engine mount struts, and replacement of struts with new struts, if necessary. This proposed AD also would require the eventual replacement of all struts with new struts; such replacement would constitute terminating action for the visual inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Currently, there are no Canadair Model CL–215–6B11 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the proposed AD would be $550 per airplane.

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

For the reasons discussed above, I certify that this 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:

Canadair: Docket 93–NM–135–AD.

Applicability: Model CL–215–6B11 series airplanes, serial numbers 1057, 1061, 1080, 1113 through 1115 inclusive, 1121, 1122, 1124, and 1125; turboprop versions only; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rear engine mount struts, which could subsequently result in reduced structural integrity of the nacelle and engine support structure, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracking in the rear engine mount struts, part number (P/N) 87110016–003, in accordance with Canadair Model CL–215–6B11 Alert Service Bulletin 215–A3040, dated September 2, 1992.

(1) If no cracking is detected, repeat the visual inspection thereafter at intervals not to exceed 50 hours time-in-service, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any cracking is detected, prior to further flight, replace the engine rear mount strut with a new strut, P/N 87110016–009 or –011, in accordance with the service bulletin.

(b) Within 2 years after the effective date of this AD, replace all engine rear mount struts, with new struts, P/N 87110016–009 or –011, in accordance with Canadair Model CL–215–6B11 Alert Service Bulletin 215–A3040, dated September 2, 1992. Such replacement constitutes terminating action for the inspections required by this AD.

(c) As of the effective date of this AD, no person shall install a rear engine mount strut, P/N 87110016–003, on any airplane.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(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 October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25043 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–156–AD]

Airworthiness Directives; McDonnell Douglas Model DC–8, DC–9, and DC–9–80 Series Airplanes; Model MD–88 Airplanes; and C–9 (Military) 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 McDonnell Douglas Model DC–8, DC–9, and DC–9–80 series airplanes; Model MD–88 airplanes; and C–9 (military) airplanes. This proposal would require inspection of the center and side windshields, and replacement of discrepant windshields. This proposal is prompted by reports that the core ply of certain windshields were incorrectly tempered during the manufacturing process. The actions specified by the proposed AD are intended to prevent failure of the windshield.

DATES: Comments must be received by November 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–156–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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210; or Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

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–156–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–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Recently, one operator of Model DC–9–82 series airplanes reported that the first officer's side windshield failed due to a failure of the glass core ply. Investigation revealed that this failure could be attributed to incorrect tempering of the core ply during the manufacturing process of center and side windshields that were manufactured by Pilkington Aerospace (formerly Swedlow Incorporated) after February 1992. If the core ply should fail in flight, the two remaining plies should sustain normal operating loads (during cabin pressurization). However, the windshield would lose its fail-safe capability and would be unable to protect the pilot from a bird strike or an impact with other foreign objects. This condition, if not corrected, could result in failure of the windshield.

Although the windshield involved in the described incident was installed on a Model DC–9–82 airplane, the discrepant windshields could also be installed on Model DC–8 and DC–9 series airplanes, other Model DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes. Therefore, the FAA has determined that the same unsafe condition may also exist with regard to those airplanes.

The FAA has reviewed and approved McDonnell Douglas DC–8 Alert Service Bulletin A56–16, Revision 1, dated July 1, 1993 (for Model DC–8 series airplanes); and McDonnell Douglas DC–9 Alert Service Bulletin A56–15, dated June 15, 1993, and Revision 1, dated September 15, 1993 (for all Model DC–9 series airplanes). These service bulletins describe procedures for inspection and replacement of center and side windshields that were manufactured by Pilkington Aerospace. Replacement windshields are either those not manufactured by Pilkington, or those that have been manufactured by Pilkington, but previously recertified and re-identified by Pilkington.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection of the center and/or side windshields to determine the manufacturer; and replacement of any windshields with either ones that were not manufactured by Pilkington, or ones that were manufactured by Pilkington, but have been previously recertified and re-identified by Pilkington. These actions would be required to be accomplished in accordance with the applicable service bulletin described previously. Only airplanes on which the windshield(s) was replaced after February 1992 would be affected.

There are approximately 235 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $55 per work hour. Based on these figures, the cost impact of the proposed inspections of this AD on U.S. operators of Model DC–8 series airplanes is estimated to be $3,850, or $27.50 per airplane.

There are approximately 1,978 Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,079 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately .5 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the cost impact of the proposed inspections of the AD on U.S. operators of Model DC–9 and DC–9–80 series airplanes, Model MD–88 airplanes, and C–9

(military) airplanes is estimated to be $29,673, or $27.50 per airplane.

Based on the figures discussed above, the total cost impact of the proposed inspection actions on U.S. operators is estimated to be $33,523. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

Should an inspection reveal that a discrepant windshield was installed, the necessary replacement of that windshield would require approximately 10 additional work hours to accomplish, at an average labor rate of $55 per work hour. Required replacement parts would be provided at no cost to operators. Based on these figures, the total cost impact of any necessary replacement on U.S. operators would be $550 per airplane.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (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:

McDonnell Douglas: Docket 93–NM–156–AD.

Applicability: Model DC–8–60 and –70 series airplanes on which the center windshield has been replaced after February 1992; and Model DC–9–10, –20, –30, –40, and –50 series airplanes, Model DC–9–81, –82, –83, and –87 airplanes, Model MD–88 airplanes, and C–9 (military) airplanes, on which the center and/or side windshield(s) has been replaced after February 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the windshield, accomplish the following:

(a) For Model DC–8–60 and –70 series airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield to determine the manufacturer.

(1) If the windshield was not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center windshield with either of the windshields specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, in accordance with McDonnell Douglas DC–8 Service Bulletin A56–16, Revision 1, dated July 1, 1993.

(i) A center windshield that was not manufactured by Pilkington Aerospace; or

(ii) A center windshield that has been manufactured by Pilkington Aerospace, but previously recertified and re-identified by Pilkington Aerospace.

(b) For Model DC–9–10, –20, –30, –40, and –50 series airplanes; Model DC–9–81, –82, –83, and –87 airplanes; Model MD–88 airplanes; and C–9 (military) airplanes: Within 30 days after the effective date of this AD, perform a visual inspection of the center windshield and side windshield to determine the manufacturer.

(1) If the center and side windshields were not manufactured by Pilkington Aerospace: No further action is required by this AD.

(2) If the center windshield, part number 5887275–501, or the side windshield, part number 5912290–501, was manufactured by Pilkington Aerospace: Prior to further flight, replace the center and/or side windshield(s) with either of the windshields specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A56–15, dated June 15, 1993; or Revision 1, dated September 15, 1993.

(i) A center and/or side windshield(s) that was not manufactured by Pilkington Aerospace; or

(ii) A center and/or side windshield(s) that has been manufactured by Pilkington Aerospace, but previously recertified and re-identified by Pilkington Aerospace.

(c) As of the effective date of this AD, no person shall install on any airplane a center windshield, part number 5887275–501, or side windshield, part number 5912290–501, that has been manufactured by Pilkington Aerospace, unless that windshield has been previously recertified and re-identified by Pilkington Aerospace.

(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, Los Angeles Aircraft Certification Office (ACO), 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, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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 October 6, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–25044 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–33026; File No. S7–29–93]

RIN 3235–AG00

Payment for Order Flow

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") proposes a rule and rule amendments to require enhanced disclosure of payment for order flow practices on customer confirmations, annual account statements, and on new accounts. The practice of payment for order flow has generated much debate within the securities industry regarding the potential benefits and harm to public investors. The Commission's proposal is designed to advance that debate by offering a concrete regulatory proposal and possible alternatives or supplements to that proposal for public consideration. The Commission believes that fuller disclosure of payment for order flow practices will further competition for retail orders by enabling customers to evaluate better the markets to which their orders are routed.

DATES: Comments should be submitted on or before December 3, 1993.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should refer to File No. S7–29–93. All submissions will be made available for public inspection and copying at the Commission's Public Reference Room, room 1024, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Jill W. Ostergaard, 202/272–7380, Attorney, Branch of the National Market System, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5–1) 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Commission proposes for comment amendments to Rule 10b–10(a)(7)(iii), (17 CFR 240.10b–10(a)(7)(iii)) requiring enhanced disclosure on customer order confirmations and Rule 10b–10(e)(9) (17 CFR 240.10b–10(e)(9), defining payment for order flow; and proposes Rule 11Ac1–3, (17 CFR 240.11Ac1–3) requiring enhanced disclosure on customer annual account statements, and on new accounts regarding payment for order flow. Generally speaking, payment for order flow is the practice of market makers or exchange specialists compensating brokerage firms for directing customer orders to them for execution.[1] As discussed in greater detail below, this issue has generated much debate and controversy within the securities industry regarding the potential benefits and harm to public investors, and the U.S. Congress has shown continuing interest in the resolution of that controversy.[2] In 1984, the NASD established a special committee to consider the topic of payment for order flow,[3] and in 1989, the Commission hosted a roundtable discussion on this topic.[4] In 1990, the Chicago Stock Exchange ("CHX") (formerly the Midwest Stock Exchange or "MSE") submitted a petition for rulemaking[5] regarding payment for order flow that was withdrawn on October 29, 1991.[6] In late 1990, the NASD Board of Governors appointed another special committee, headed by former SEC Chairman David S. Ruder, to study payment for order flow practices in the securities industry.[7] In 1992, the Commission solicited comment on payment for order flow practices as part of the Division of Market Regulation's ("Division") Market 2000 Study.[8] Today's proposal is designed to advance that debate by offering a concrete regulatory proposal and possible alternatives or supplements to that proposal for public consideration.

Specifically, the Commission is proposing to amend Rule 10b–10, subparagraph (a)(7)(iii), (17 CFR 240.10b–10(a)(7)(iii) to require broker-dealers to include on the confirmation of each transaction in a national market system security whether payment for order flow was received and, if so, the amount of any monetary payment, discount, rebate or reduction in fee received in connection with the transaction in a national market system security. In addition, the proposed amendment to paragraph (e)(9) of Rule 10b–10 would define payment for order flow to include all forms or arrangements compensating brokers for directing order flow.

The Commission is also proposing to add Rule 11Ac1–3, paragraphs (a)(1) and (2), to require disclosure on each new account and on a yearly basis thereafter, on the annual account statement, the firm's policies regarding receipt of payment for order flow from any broker dealer (including market makers), exchange members or exchanges to which it routes customers' orders in national market system securities for execution; and information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

Although the Commission preliminarily believes a disclosure approach will best address concerns regarding payment for order flow, the Commission also requests comment on various alternatives to that approach. These alternatives range from prohibiting payment for order flow to clarifying the method by which trades and quotes are reported. The remainder of this release describes payment for order flow practices and issues raised by those practices. Thereafter, the release describes the approaches the Commission might take to address those concerns, including increased disclosure requirements applicable to payment for order flow, remission of those payments to the customer whose order generated the payment, and changes to trade and quote reporting rules to reduce the minimum increment for reporting prices. The release identifies specific areas commentators might address and includes the text of a proposed rule and rule amendments.

II. Description of Payment for Order Flow Practices

The practice of payment for order flow evolved in part from fees traditionally paid by wholesale market makers in OTC securities to their

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[1] As discussed more fully below (see Section III.E., infra), there is a debate among the commentators regarding precisely what types of practices should be deemed to involve payment for order flow. On the one hand, some have focused on cash payments by over-the-counter ("OTC") market makers for the receipt of order flow. Similarly, some have argued that cash payment for order flow is distinguishable from non-cash payments such as fee reductions or rebates because, unlike rebates, cash payments may compromise the broker's order routing decision such that the best execution of customer orders is not obtained. On the other hand, others have argued that a variety of economic incentives to direct order flow to a particular market are, at least, the economic equivalent of payment for order flow.

[2] On March 8, 1992, Congressman John D. Dingell, Chairman of the House Committee on Energy and Commerce wrote to then Chairman Breeden regarding payment for order flow. See letter from John D. Dingell, Chairman, House Committee on Energy and Commerce, to Honorable Richard C. Breeden, Chairman, SEC, dated March 6, 1992.

On May 13, 1993, the Subcommittee on Telecommunications and Finance ("Subcommittee") of the House Committee on Energy and Commerce held a hearing regarding the future of the stock market and inducements for order flow ("Subcommittee Hearing"). The following persons testified before the Subcommittee: Richard A. Grasso, Executive Vice Chairman and President, New York Stock Exchange, Inc. ("NYSE"); David S. Ruder, Partner, Baker and McKenzie; Bernard L. Madoff, Chairman, Bernard L. Madoff Investment Securities; Robert B. Fagenson, Managing Partner, Fagenson Frankel Streicher & Cohen (a NYSE specialist firm); and Caroline B. Austin, President and Chief Executive Officer, Dempsey & Company (a Chicago Stock Exchange specialist firm). All of the individuals provided written testimony. Ms. Austin and Mr. Fagenson issued a joint statement.

[3] The Committee concluded that, at the least, confirmation disclosure of payment for order flow is required. On April 30, 1985, the NASD issued Notice to Members 85–32, which reminded members of their obligations to obtain best execution. The notice also stated that payments received for directing order flow must be disclosed in customer confirmations.

[4] See Securities and Exchange Commission, Roundtable on Commission Dollar and Payment for Order Flow Practices (July 24, 1989) (official transcript); and Division of Market Regulation, Roundtable Summary 14 (available in the Commission's Public Reference Room).

[5] The Petition was filed with the Commission on May 21, 1990 pursuant to section 553(e) of the Administrative Procedure Act, 5 U.S.C. 553(e) (1988), and Rule 4(a) of the Commission's Rules of Practice, 17 CFR 201.4(a) (1992).

[6] See letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE (currently the CHX), to Jonathan G. Katz, Secretary, SEC, dated October 29, 1991.

[7] The Committee issued its report on July 23, 1991. See NASD, Inducements for Order Flow (July 1991) ("Ruder Report").

[8] Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587.

correspondents.[9] Historically, regional correspondents have been paid a fee per share for handling trades with other local firms on behalf of the wholesale firm. At times, these regional correspondents also have been paid for sending their order flow to the wholesale firm.[10] As competition for OTC order flow increased, wholesale firms began to approach other retail firms, particularly discount brokers, to assure themselves a steady stream of orders. To compensate retail firms for guaranteeing such order flow, wholesalers began paying for this order flow. The payment of cash for order flow is now common in the OTC market.[11] The payment of cash or its monetary equivalent for order flow in the listed market is a relatively recent phenomenon, but one that has become widespread. It began when several new third market makers [12] entering the market within the past five years used it to attract order flow to their operations, and then spread to some regional specialists.[13] The regional stock exchanges maintain that third market makers instituted the practice of payment for order flow on a large scale, and that the regionals followed to prevent loss of business.[14] In addition, although the practice originated with wholesale firms with no direct retail order flow,[15] some integrated firms also may be paying for order flow now. Although no precise figures exist, the Commission estimates that between 15% and 20% of the order flow in listed stocks is routed pursuant to cash payment arrangements. Generally, firms that have payment for order flow arrangements with other firms pay a small fee, usually between one and two cents per share, for retail orders routed to them.[16]

In this connection, many OTC and third market makers have developed automated execution systems that provide their customers with quick, efficient and comparatively inexpensive executions at the best displayed quotation.[17] Some systems also expose orders which provide an opportunity for customer orders to be executed at a price between the quoted spread.[18] These automated execution systems have enhanced these firms' ability to execute small orders more cost effectively. As competition among firms providing automated execution systems has increased, it appears that firms increasingly use payment for order flow as a means of attracting order flow to their automated execution systems.

III. Issues Raised by Payment for Order Flow

Payment for order flow practices may pose a potential conflict between the interests of a customer and the interests of a broker. The conflict of interest inherent in the receipt of such compensation raises disclosure, best execution, and agency and market structure issues, which are discussed below.

A. Disclosure

A firm receiving payment for order flow must, at least, meet certain minimum disclosure requirements. The Commission's confirmation disclosure rule, Rule 10b-10 under the Securities Exchange Act of 1934 ("Act"),[19] requires that confirmations sent to customers for agency transactions disclose the "price" at which the order was executed, as well as the remuneration paid to the broker-dealer by the customer in the trade. Paragraph (a)(7)(iii) of Rule 10b-10 also generally requires broker-dealers to disclose the source and amount of any other remuneration received in connection with a transaction. In most transactions,[20] however, the Rule permits broker-dealers merely to state "whether any other remuneration has been or will be received," and to furnish the source and amount of such other remuneration on written request. Thus, Rule 10b-10 currently requires a broker-dealer to indicate specifically if it is receiving payment for order flow in connection with a particular customer trade, but allows the broker-dealer to

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[9] Firms often have relationships with regional firms, which are known as "correspondent networks." Correspondent networks were developed to provide regional firms an established contact point in the New York City market and to provide New York firms access to a wider geographical area. The correspondent relationship usually results in the regional correspondent firm sending much of its OTC order flow to the New York firm, providing the firm with a steady stream of orders and the regional firm with a strong relationship with a market maker.

The practice of paying for order flow in the retail equity markets has been compared at times to the use of soft dollars in the institutional markets. Both practices involve agents obtaining benefits from broker-dealers as a result of customers' securities transactions; yet there are major differences between these practices. Payment for order flow and the use of soft dollars involve different market participants, have different competitive and market structure concerns, and have different legal frameworks. The Commission believes, however, that disclosure is an important means of addressing concerns arising from soft dollar practices as well as payment for order flow. Accordingly, the Commission has directed the staff to report to the Commission, within 45 days, on the advisability of requiring more extensive disclosure by investment advisers of their soft dollar arrangements.

[10] The CHX (formerly the MSE) argues that correspondent practices bear no relationship to current rebate practices. See letter from J. Craig Long, Vice President, MSE, to Jonathan G. Katz, Secretary, SEC, dated January 8, 1991 ("January Long Letter"), at 7.

[11] At the Roundtable on Payment for Order Flow in 1989, the NASD reported that the results of a member survey indicated that of the 435 responses received, 62 firms reported making payments to some 241 firms. The average payments reportedly were one to two cents per share. See Roundtable Summary, supra note 4, at 14.

[12] Third market makers make OTC markets in stocks that are also listed and traded on an exchange.

[13] In September of 1989, the Division sent letters to the SROs requesting that they survey members regarding the extent of payment for order flow practices. The Philadelphia Stock Exchange reported that they surveyed 179 members and received 156 responses claiming that no member currently pays for order flow. See letter from Diane Anderson, Assistant Vice President, Examinations Department, Philadelphia Stock Exchange, to Jill Finder, Attorney, Branch of the National Market System, Office of Self-Regulatory Oversight and Market Structure, Division of Market Regulation, SEC, dated February 23, 1990. The CHX reported that no specialists on the CHX reported engaging in payment for order flow, although the Commission understands that some CHX specialists now may be paying for order flow. See letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated February 21, 1990. The Pacific Stock Exchange surveyed 461 members and received 156 responses. Of the 82 specialists responding (a 100% response rate), 40 pay or receive payment for order flow. Of the 130 market makers responding (a 53% response rate), only one pays or receives payment for order flow. Of the 47 floor brokers responding (a 36% response rate), none pays or receives payment for order flow. See letter from David P. Semak, Vice President, Regulation, Pacific Stock Exchange, to Jill C. Finder, Attorney, SEC, dated February 23, 1990. The Boston Stock Exchange reported that out of 21 specialist firms, none pays or receives cash payment for order flow, but three firms engage in other forms of reciprocal practices. See letter from William G. Morton, Jr., Chairman and Chief Executive Officer, Boston Stock Exchange, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated August 21, 1990. The Commission received no written response from the New York Stock Exchange ("NYSE") or the American Stock Exchange.

See also Norris, N.Y. Times, Mar. 2, 1992, at D1; Coffee, Brokers and Bribery, N.Y.L.J., Sept. 27, 1990, at 5; Torres, Third-Market Trading Crowds Stock Exchanges, Wall St. J., Mar. 8, 1990, at C1.

[14] See letter from William G. Morton, Jr., BSE, John L. Fletcher, MSE, Leopold Korins, PSE, and Nicholas A. Giordano, Phlx, to Jonathan G. Katz, Secretary, SEC, dated December 11, 1992.

[15] Because of their lack of retail networks, wholesale firms often are dependent on their ties to other broker-dealer firms for order flow.

[16] The Commission understands that payment for unlisted stocks is greater than payment for listed stocks.

[17] Orders not processed through these systems are executed over the phone, manually confirmed, and then sent to clearing. Automated execution systems automate each of these steps. See Division of Market Regulation, The October 1987 Market Break 1–5 to 1–7 and Chapter 7 (Feb. 1988), and Division of Market Regulation, Market Analysis of October 13 and 16, 1989 35–61 and 86–88 (Dec. 1990) for a description of these systems.

[18] See Madoff Letter, infra. note 28.

[19] 17 CFR 240.10b-10.

[20] The only transactions subject to the greater disclosure requirements are purchases from broker-dealers participating in a distribution, and sales where the broker is participating in a tender offer.

omit the description of this payment from the confirmation.

On April 18, 1990, the NASD filed with the Commission a proposed rule change, subsequently amended, that would require enhanced disclosure of payment for order flow to customers.[21] Specifically, the amendment to the NASD's Rules of Fair Practice would require members receiving compensation for sending customer orders to a particular market center or market maker to give or send to each customer, at or before the completion of each transaction, written notification disclosing the following, in bold print:

The firm receives remuneration for directing orders to particular broker/dealers or market centers for execution. Such remuneration is considered compensation to the firm, and the source and amount of any compensation received by the firm in connection with your transaction will be disclosed upon request.

Allowing post-confirmation description of additional compensation eases the difficulty for broker-dealers of disclosing diverse additional compensation arrangements; however, this disclosure method may not effectively inform customers of factors influencing the broker-dealers' execution of their orders. Unless a confirmation clearly indicates that payment for order flow is received, the customer will not be aware that the arrangement exists, much less that there is more information about the arrangement available from the broker-dealer upon written request. Ambiguity on this score, combined with the requirement that the customer request the description in writing, in practice may not provide adequate disclosure of payment for order flow practices. Critics of payment for order flow recommend, at the very least, enhancing current disclosure requirements.[22]

The Commission preliminarily believes that there is a clear need for accurate and complete disclosure to customers of payment for order flow practices. A broker-dealer's practices may be significant to a customer in choosing a broker-dealer and may affect how the customer deals with a broker-dealer. For instance, if a customer were aware that its broker-dealer directed orders in exchange-listed stocks to a third market maker or exchange market in return for payment for those orders, the customer might choose to (1) direct the broker-dealer to route its order to a particular market,[23] (2) give its order to a broker that does not receive payment for order flow, or (3) try to negotiate a lower commission to reflect that its broker-dealer received payment for execution of its orders. Therefore, the means of assuring adequate disclosure to customers is an important issue.

B. Best Execution

Broker-dealers are under a duty to seek to ensure that their customers obtain the "best execution" of their orders.[24] Thus, at a minimum, firms accepting remuneration from a market maker for directing order flow to that market maker are obligated to fulfill their duty of best execution to their customers.[25] Indeed, the NASD

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[21] File No. SR–NASD–90–22. Securities Exchange Act Release No. 28020 (May 15, 1990), 55 FR 21284. The proposal is the subject of a separate proceeding in which the Commission has sought public comment. The Commission received 11 comment letters responding to the initial release, two of which supported the proposal (see letters to Jonathan G. Katz, Secretary, SEC, from Alan B. Levenson, Fulbright & Jaworski, and Irving M. Pollack (on behalf of the firms of Bernard L. Madoff Investment Securities, Inc., Mayer & Schweitzer, Inc., and Herzog, Heine, Geduld, Inc.), dated September 19, 1990 ("Pollack Letter"); and Frederick J. Reif, Vice President, A.G. Edwards & Sons, Inc., dated October 4, 1990 ("Reif Letter")); seven of which opposed it (see letters to Jonathan G. Katz from Andrew M. Klein (on behalf of anonymous clients), Schiff, Hardin & Waite, dated July 5, 1990 ("Klein Letter"); Thomas F. Ryan, Jr., Executive Managing Director and John M. Liftin, General Counsel, Kidder, Peabody & Co., dated July 27, 1990 ("Ryan Letter"); J. Craig Long, Vice President, General Counsel and Secretary, MSE, dated July 17, 1990 ("July Long Letter"); James E. Buck, Senior Vice President and Secretary, NYSE, dated June 18, 1990 ("Buck Letter"); Margaret G. Abrams, Attorney, Fenchurch Securities, Inc., dated June 12, 1990 ("Abrams Letter"); Thomas G. Wilson, dated June 12, 1990 ("Wilson Letter"); Christopher P. Kleihege, President, K Securities, dated June 7, 1990 ("Kleihege Letter") and letter from Peter Blowitz, President, Security Traders Association of Los Angeles, Inc., to Brandon Becker, Associate Director, Division of Market Regulation, SEC, dated April 18, 1991 ("Blowitz Letter")); one supported the proposal subject to specific comments (see letter from Jack W. Lavery, Senior Vice President, Merrill Lynch International Bank, to Jonathan G. Katz, dated June 22, 1990 ("Lavery Letter")); and one requested that the Commission republish the release with a request for comments on additional issues (see letter from Robert M. Lam, Chairman, Pennsylvania Securities Commission, to Jonathan G. Katz, Secretary, SEC, dated July 27, 1990).

Of those opposing the filing, four oppose the practice of payment for order flow outright, regardless of the disclosure (see July Long Letter, Klein Letter, Kleihege Letter and Blowitz Letter; separately, the MSE also requested that the Commission disapprove the NASD's proposal); two oppose the practice and believe that the NASD's proposed language is inadequate (see Ryan Letter and Wilson Letter); and one did not express opposition to the practice but believes the NASD's disclosure is inadequate (see Buck Letter). Those commentators who oppose the practice raised best execution concerns and commercial bribery issues and indicated that the practice may be inimical to the national market system. One opposing commentator believed that current disclosure practices are adequate (see Abrams Letter). The commentator supporting the proposal subject to specific comments suggested that the language appear in bold type-face on the face of the confirmation and that it be reworded to provide that the broker had received payment for order flow when it indeed had (see Lavery Letter).

The NASD also filed an amendment to the proposed rule change on December 19, 1990. Securities Exchange Act Release No. 28774 (Jan. 14, 1991), 56 FR 2573. The amendment modifies the disclosure language to state affirmatively that the market maker accepts payment for order flow where applicable. The Commission received one comment letter on the amendment from the NYSE, which argued that the proposal continues to be inconsistent with Rule 10b-10. Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, dated February 21, 1991.

The NASD recently filed an additional rule proposal regarding enhanced disclosure. The Commission will review the proposal and will notice the filing in due course. See File No. SR–NASD–93–53.

[22] See letter from John B. Burke, President, Alliance of Floor Brokers, to Jonathan G. Katz, Secretary, SEC, dated October 19, 1992 ("Alliance of Floor Brokers Letter"); letter from Colleen Curran Harvey, Senior Counsel, IDS Financial Services, Inc., to Jonathan G. Katz, Secretary, SEC, dated October 20, 1992 ("IDS Letter"); letter from Jeffrey R. Larsen, Senior Legal Counsel, Fidelity Investments, to Jonathan G. Katz, Secretary, SEC, dated November 5, 1992 ("Fidelity Investments Letter"); letter from Harold S. Bradley, Director of Equity Trading Investors Research Corporation, to Jonathan G. Katz, Secretary, SEC, dated November 18, 1992 ("Investors Research Letter"); letter from David Humphreville, Co-Chairman, and Caroline B. Austin, Co-Chairman, National Specialists Association, to Jonathan G. Katz, Secretary, SEC, dated December 11, 1992 ("National Specialists Association Letter"); letter from J.R.C. White, Head of Department of Conduct of Business, Securities and Futures Authority, to Jonathan G. Katz, Secretary, SEC, dated October 20, 1992 ("Securities and Futures Authority Letter").

[23] See Section IV.A., *infra*.

[24] NASD Rules of Fair Practice, Art. III, section 1, Interpretation of the Board of Governors on Execution of Retail Transactions in the Over-The-Counter Market. See also Section 11A(a)(1)(D) of the Act, 15 U.S.C. 78k–1(a)(1)(D) (1988). Broker-dealers also have relevant disclosure obligations under the general antifraud provisions of the securities laws. In particular, the "shingle theory," which has been adopted by the Commission and affirmed by the courts, holds that a dealer who engages in business impliedly represents that he will deal fairly with the public and in accordance with the standards of the profession. See *In re Duker & Duker*, 5 S.E.C. 386 (1939); and N. Wolfson, R. Phillips & T. Russo, Regulation of Brokers, Dealers and Securities Markets ¶ 2.10, at 2–51 (1977).

Further, in the multiple trading environment, "best execution" refers to the obligation of the broker to execute a customer's order in the best market. See section 11A(a)(1)(C)(iv) of the Act, 15 U.S.C. 78k–1(a)(1)(C)(iv) (1988). See also Securities Exchange Act Release No. 26870 (May 26, 1989), 43 SEC Docket 1793 (Adoption of Rule 19c–5, Multiple Trading of Standardized Options).

[25] At least one commentator, however, has stated that payment for order flow practices conflict with self-regulatory organization rules "compelling adherence to just and equitable principles of trade * * *." See Klein Letter, *supra* note 21, at 15. But see Ruder Report, supra note 7, at 27–29; letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to Jonathan G. Katz, Secretary, SEC, dated August 31, 1990 ("NASD 1990 Letter") at 2; and Pollack Letter, *supra* note 21.

Some have also argued that the payee must be held to have assumed at least part of the duty of best execution. See letter from Richard B. Gunter, Jr., Chairman, and John L. Watson III, President,

Continued

repeatedly has noted that pursuant to its rules, members who receive payment for order flow are under an obligation to ensure that customers obtain "best execution" of their orders.[26]

In describing a brokerage firm's best execution obligation, the Commission has noted that:

> [while] brokers have not been held by the Commission, the self-regulatory organizations or the courts to an absolute requirement of achieving the most favorable price on each order[,] [w]hat has been required is that the broker endeavor, using due diligence, to obtain the best execution possible given all the facts and circumstances. These factors include, among other things, the size of the order, the trading characteristics of the security involved, the availability of accurate information affecting choices as to the most favorable market in which execution might be sought, the availability of technological aids to process such data, the availability of economic access to the various market centers and the costs and difficulty associated with achieving an execution in a particular market center.[27]

The Commission understands that most firms that pay for order flow guarantee, at a minimum, executions at the prevailing displayed best bid or offer.[28] Such quote-derived executions in many ways are not materially different than automated execution systems operated by the regional exchanges for years. Automated execution systems offer extremely fast and assured executions and facilitate prompt reports back to the customer. On the other hand, orders sent to an exchange for manual handling and, to a lesser extent, those sent to an OTC dealer for manual handling, may have a greater opportunity for an execution between the spread than do orders that are routed to automated execution systems.[29] In addition, it is not clear that all OTC market makers who pay for order flow permit two agency orders to interact at prices between the bid and the offer price.[30] This failure has a particular potential to disadvantage customer orders since price improvement is not available.[31]

C. Agency Concerns

The Commission is concerned that the availability of payments in return for order flow commitments may color the evaluation by a brokerage firm of the most advantageous market or market maker to whom to route its customer order.[32] The Commission in the past has found derivatively priced automated execution systems to be consistent with the Act. Several commentators have raised concerns that a broker's acceptance of a payment concerning the subject of the agency relationship, in other words, the customer's order, may be a breach of the duty owed by a broker

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Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated Nov. 24, 1992.

[26] *See* Securities Exchange Act Release No. 28020 (May 15, 1990), 55 FR 21284; and NASD 1990 Letter, *supra* note 25, at 5. The NASD goes further and argues that, in fact, its examinations of its members demonstrate that they do in fact obtain best execution of customer orders even when they receive payments for execution of these orders. NASD 1990 Letter, *supra* note 25, at 5; and Ruder Committee Report, *supra* note 7, at 4.

[27] SEC, Second Report on Bank Securities Activities: Comparative Regulatory Framework Regarding Brokerage-Type Services 97–98, 98 n.233 (Feb. 3, 1977), as reprinted in Senate Comm. on Banking, Housing and Urb. Affs., 95th Cong., 1st Sess., Report on Bank's Securities Activities of the SEC 145, 251–52, 252 n.233 (Comm. Print 1977).

Furthermore, the Commission has stated that "the creation of [other] explicit obligation[s] upon broker-dealers] would in no way limit a broker's existing duty to seek to obtain best execution of his customers' orders." SEC, Status Report on the Development of a National Market System, Securities Exchange Act Release No. 15671 (Mar. 22, 1979), 44 FR 20360 (citing Restatement (Second) of Agency Law § 424 (1957)).

[28] Indeed, at least one such firm has improved its system to provide an opportunity for customer orders to be executed at a price between the quoted spread. Letter from Bernard L. Madoff and Peter B. Madoff, Bernard L. Madoff Investment Securities, to Jonathan G. Katz, Secretary, SEC, dated October 16, 1992 ("Madoff Letter"); testimony of Bernard L. Madoff, Subcommittee Hearing, May 13, 1993.

The automated execution systems operated by the regional exchanges, with the exception of the Philadelphia Stock Exchange's PACE system, allow for exposure of customer orders. See Securities Exchange Act Release Nos. 28014 (May 14, 1990), 55 FR 20880; and 27727 (Feb. 22, 1990), 55 FR 7396.

In addition, to enhance its ability to compete for order flow, the CHX, like Bernard L. Madoff, has modified its automated execution system to provide executions between the spread in certain circumstances. "SuperMAX," as the enhanced system is called, guarantees that the execution price of small agency market orders received over the MAX System will be automatically improved from the consolidated best bid or offer according to certain pre-defined criteria. See Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069.

[29] The Ruder Committee maintains, however, that "when a flow of aggregated small orders is directed to a market maker in response to inducements for order flow, brokers receiving execution at the best published bid or offer are obtaining best execution for those small orders." The Committee recommended that the NASD revise its Best Execution Interpretation to distinguish between executions of small customer orders and larger orders and to recognize the presumption that best execution will be obtained by executions for small orders at the best published bid or offer. Ruder Report, *supra* note 7, at 29.

The Commission preliminarily believes that such interpretation of best execution may not be consistent with previous statements of the Commission regarding best execution. The Commission requests comment on this issue.

[30] In contrast, the NYSE requires that when a member has crossing orders, he shall publicly offer such security at a price that is higher than his bid by the minimum variation permitted in the security before transacting with itself. NYSE Rule 76.

[31] The NYSE notes that 20 to 30 percent of all trades occur between the best bid and offer. Moreover, the NYSE represents that if the smaller universe of trades in markets with spreads of more than 1/8th are considered, approximately 60 percent of the trades occur between the best bid and offer. Shapiro, Recent Competitive Developments in U.S. Equity Markets, NYSE Working Paper 93–02 (May 28, 1993).

Similarly, while customers traditionally have expected executions at the prevailing quote, the NASD reports that public investors are often able to execute trades for NMS stocks inside the best bid or ask price as frequently, as the overall market. For example, the NASD recently determined that 35 percent of public share volume and 21 percent of public trades occurred inside the best bid/ask spread, compared to overall trading where 41 percent of the volume and 26 percent of the trades occurred inside the best bid/ask spread. Public customers dealing in larger volumes are reported to trade inside the best bid and ask almost as frequently as the overall market. According to the NASD data, of the total public share volume executed inside the best bid and ask, 91 percent was transacted in trades of more than 1,000 shares, including 56 percent in trades of 10,000 or more shares. The overall market executed 89 percent of the share volume inside the best bid and ask in trades of more than 1,000 shares, including 48 percent in trades of 10,000 or more shares.

The ability to trade inside the best bid and ask increases significantly as the bid/ask spread increases. The NASD found that 83 percent of all share volume, including 81 percent of public share volume, transacted inside the best bid and ask, is in securities with a spread less than or equal to ½. Further, 42 percent of all share volume, including 37 percent of public share volume, transacted inside the best bid and ask, is with a spread of less than or equal to ¼. NASD Economic Research, Public Trading Inside the Best Bid/Ask Spread and Actual Spreads Paid in NASDAQ/NMS Stocks (April 14, 1993).

The Madoff enhanced system has executed an average of 50% of the orders routed to the system in securities with spreads of greater that one-eighth of a point between the spread. See generally Ruder Committee Report, *supra* note 7, at 25 n.48. See also testimony of Bernard L. Madoff, Subcommittee Hearing, May 13, 1993.

At the Commission roundtable, however, Bernard L. Madoff argued that, for a large percentage of the listed securities for which OTC firms pay for orders, the spread is only ⅛ point and no execution between the spread is thus possible, assuming an eighth point pricing unit rather than decimal pricing. See Roundtable Summary, *supra* note 4, at 16. See also Section IV.B., *infra*.

Finally, the CHX argues that execution on the inside market does not necessarily yield best execution, and that in order to achieve best execution, these prices (net of any payment for order flow) must be given to the customers and publicly reported. See January Long Letter, *supra* note 10, at 4.

[32] The Commission also has upheld a NASD disciplinary action for violations of just and equitable principles of trade in connection with the execution of customer orders. The Commission found that the broker-dealer failed to execute fully and promptly, to the greatest extent possible, customer orders in a stock in which it was a market maker. *In re Bateman Eichler, Hill Richards, Inc.*, 47 S.E.C. 692 (1982) and *In re Bateman Eichler, Hill Richards, Inc.*, 47 S.E.C. 1025 (1984), *aff'd sub nom. Eichler v. SEC*, 757 F.2d 1066 (9th Cir. 1985). Compare *In re E.F. Hutton & Co.*, Securities Exchange Act Release No. 25887 (July 6, 1988), 41 SEC Doc. 473, *appeal filed, Hutton & Co., Inc. v. SEC*, Doc. No. 88–1649 (D.C. Cir. Sept. 2, 1988) (Stipulation of Dismissal filed Jan. 11, 1989), in which the Commission affirmed a NASD decision disciplining E.F. Hutton & Co. for its handling of a customer limit order.

See also, e.g., Division of Market Regulation, Automation in U.S. and Foreign Securities Markets (Nov. 1989).

to its customer and is not permitted under general agency law.[33]

D. Market Structure Issues

Payment for order flow also raises market structure issues. One opponent of the practice believes that payment for order flow: (1) Has an effect on pricing efficiency in the markets; (2) is inconsistent with the goal of fair competition set forth in Section 11A of the Act; (3) reduces market maker quote competition for orders; and (4) improperly diverts customer orders to automated execution systems where they cannot be executed without the participation of a dealer.

The first issue is what effect, if any, payment for order flow arrangements have on the pricing efficiency of the markets. The amount dealers are willing to pay for order flow is not publicly disseminated, either in the dealers' quotations or in transaction reports of the execution of those orders. To some, this means that the actual prices at which transactions are effected are not publicly available.[34]

In addition, opponents argue that payment for order flow practices contravene the statutory directive that the national market system be designed to assure fair competition among brokers and dealers and between exchange markets and markets other than exchange markets.[35] They argue that a market maker or specialist who does not pay for order flow cannot effectively compete with one that does, primarily because receipt of these payments reduces the cost of doing business for the broker who accepts them.[36]

Opponents also argue that payment for order flow may reduce the role of quotations as a medium for market maker quote competition for orders. To the extent that a market maker receives order flow regardless of the competitiveness of its quote, the market maker has less need to seek order flow through competitive quotes. Thus, if payment for order flow arrangements provide a market maker with substantial order flow on a non-quote basis, they may reduce the market maker's incentive to quote a narrower spread. Indeed, increased commitments by market makers to execute order flow derivatively at the best bid or offer may provide direct incentives to widen the spread between bid and ask quotations. Furthermore, it is possible that because automated executions can be obtained from nearly any participating market maker at the inside quote, fewer orders may be directed for execution to market makers actually competing based on price.[37] The theoretical result could well be a widening of spreads, thus reducing the pricing efficiency of the market and raising costs of trades for those securities.

E. Related Practices

The Commission is aware that industry participants have entered into a variety of other arrangements in which order flow is traded for non-monetary services or other value. Examples include: Reciprocal practices, including the swapping of order flow between market makers and between specialists in different stocks, the swapping of options and futures business for order flow in stocks, and the swapping by exchange specialists of OTC business for exchange lay-off business; reduced clearing fees to correspondents; exchange of research packages for order flow; secretarial services, business machines and office space for order flow, typically provided by clearing firms; the provision of subordinated debt for order flow; adjustment of trading errors by exchange specialists; offers to participate as underwriter in public offerings; stock loans and shared interest accrued thereon; and offers of fee discounts, waivers and volume and automation discounts by exchanges for order flow.[38] The Commission invites commentators to address whether these practices raise conflict of interest concerns sufficient to justify treatment similar to the treatment of monetary payment for order flow.[39]

F. Economic Benefits of Payment for Order Flow Practices

Some commentators have argued that payment for order flow practices provide economic benefits that flow to customers. They maintain moreover, that firms regularly routing order flow to a market or market maker are providing value that is very different than the value provided in routing a single order; and that a regular flow of orders to a market maker permits that firm to profit through the regular receipt of the "dealer's turn" (i.e., buying at the bid, selling at the offer). In essence, these commentators believe that the payments received by order routing firms are similar to volume discounts and, thus, the payments are fair compensation for their channelling of the individual orders to market makers.[40]

In addition, to the extent that volume lowers unit costs, these cost savings may be reflected in retail brokerage firm revenue and expenses and through lower commission charges to investors, more expeditious executions and enhanced services.[41]

Finally, these commentators argue that payment for order flow enhances competition within the securities markets. They argue that use of automated execution systems and related practices, discussed above, have increased competition within the markets as envisioned by Congress in enacting section 11A of the Act. They argue that, within this context, payment for order flow practices have developed to allow wholesale dealers to compete

[33] See Klein Letter, *supra* note 21, and letter from John G. Weithers, Chairman, MSE, to Jonathan G. Katz, Secretary, SEC, dated February 13, 1990, attached to the Petition ("Weithers Letter") at 3. *Cf.*, Coffee, A Break or a Bribe?, Barron's, Sept. 17, 1990, at 18. See also National Specialists Association Letter, supra note 22; letter from James M. Duryea, President, Organization of Independent Floor Brokers, to Jonathan G. Katz, Secretary, SEC, dated November 15, 1992. The National Specialist Association also argues that acceptance of payment for order flow by retirement plan sponsors violates the Employee Retirement Income Security Act ("ERISA") and section 1954 of the federal criminal code (18 U.S.C. 1954). See National Specialists Association Letter, *supra* note 22. The Klein Letter also suggests that payment for order flow may violate state and federal bribery statutes. See Klein Letter, *supra* note 21, at 6–15. But see Pollack Letter, *supra* note 21, at 13–19; NASD 1990 Letter, supra note 25, at 10–12. The Commission is interested in analyses of any state statutes that commentators believe apply or may apply to payment for order flow practices.

[34] See Weithers Letter, *supra* note 33, at 2.

[35] See Section 11A(a)(1)(C)(ii) of the Act, 15 U.S.C. § 78k–1(a)(1)(C)(ii) (1988).

[36] See Klein Letter, *supra* note 21, at 17.

[37] The NASD made a similar point in noting that volume incentives provided by exchanges to attract order flow, coupled with price protection for those orders, has the effect of thwarting the routing of orders to the market quoting the best bid or offer. See NASD 1990 Letter, *supra* note 25, at 8.

[38] For examples, see Pollack Letter, *supra* note 21, at 3–5; and Ruder Report, *supra* note 7, at 16–21.

The Commission is also aware of practices within an organization or between affiliated organizations that seek to influence order flow in a particular manner, such as the internalization of a firm's own order flow; and the direction of order flow from broker-dealers to affiliated exchange specialists. The Commission invites commentators to address the implication of these arrangements and whether any additional disclosure would be desirable.

Under Rule 10b–10(a)(1), a firm trading as principal with customer orders must disclose its status as a principal and, if applicable, a market maker in those securities. See 17 CFR 240.10b–10. In addition, NYSE Rule 409(f) requires members to disclose the marketplace where a customer's order was executed. Firms that choose to route order flow to an affiliated specialist have a continuing obligation to provide their customer with best execution of their order. Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125.

[39] The CHX and NYSE maintain that hard dollar payments are not economically equivalent to these non-monetary arrangements. See January Long Letter, *supra* note 10, at 5–6 and testimony of Richard Grasso, Subcommittee Hearing, May 13, 1993. But see Ruder Report, *supra* note 7, at 24, 32.

[40] Ruder Report, *supra* note 7, at 25–26.

[41] NASD 1990 Letter, *supra* note 25, at 4; Ruder Report, *supra* note 4, at 25; letter from Joseph R. Hardiman, President, NASD, to Jonathan G. Katz, Secretary, SEC, dated November 20, 1992 ("NASD 1992 Letter"); and Madoff Letter, *supra*, note 28.

with exchanges and vertically integrated firms.[42] This competition, they argue, has resulted in a reduction of execution costs in all markets, including exchanges, which have responded with reduced exchange fees and specialist charges.[43]

The Commission realizes that payment for order flow generally involves the trades of retail customers, who are in an important sense the lowest cost customers of market makers.

There are many studies of spreads that identify two factors that systematically affect spreads: The volatility in the security, and "adverse selection"—the likelihood that the market maker is trading against a party more informed than the market maker, to whom he will lose money. It is fairly widely agreed that retail trades involve virtually no adverse selection costs. Consequently, the market maker can afford to rebate part of its spread to order flow firms.

The Commission believes that the technological advances that have allowed increased competition for retail orders have produced benefits for retail customers. For example, some regional exchanges and third market makers have introduced order exposure in order to compete with the NYSE. The NYSE has lowered commissions on retail trades through rebates on retail order flow. The Commission believes that enhanced disclosure of payments for order flow will further this competitive result by enabling customers to evaluate better the markets to which their orders are routed.

IV. Proposed Responses

A. Enhanced Disclosure

The proposed amendment to paragraph (a)(7)(iii) of Rule 10b–10 would require a broker-dealer to include on the confirmation of each transaction in national market system securities whether any payment for order flow was received and, if so, the amount of any monetary payment, discount, rebate or reduction in fee that was received in connection with the transaction in national market system securities.[44] If the broker-dealer does not receive payment for order flow, or if the customer's order would not be covered by payment for order flow arrangements, then the amendment would not require disclosure on the confirmation of that order.[45]

Proposed Rule 10b–10(e)(9) would define the term payment for order flow to include all forms or arrangements compensating for directing order flow, such as monetary payments, research, products or services, reciprocal agreements, clearing or other services; adjustment of a broker-dealer's unfavorable trading errors; offers to participate as an underwriter in public offerings; stock loans and shared interest accrued thereon; and discounts and rebates, or any other reduction of or credit against any fee, expense or other financial obligation of a broker or dealer routing a customer order. Proposed Rule 10b–10(e)(9) is drafted broadly, so that a broker-dealer accepting non-monetary compensation would be required to disclose on confirmations that payment for order flow was received. Nevertheless, the Commission preliminarily believes it should not require broker-dealers to develop value estimates for such non-monetary compensation for inclusion on the confirmation. The Commission invites commentators to address whether such estimates should be required and, if so, on what basis.

The Commission is also proposing to add Rule 11Ac1–3, paragraphs (a) (1) and (2) to require disclosure on each new account statement and on an annual basis thereafter on the account statement, the firm's policies regarding receipt of payment for order flow from any broker-dealer (including market makers) exchange members or exchanges to which it routes customers' orders in national market system securities for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a description of the nature of the compensation received; and the firm's aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm on an annual basis.[46] Although Commission rules do not expressly require broker-dealers to distribute annual account statements to customers, exchange and NASD rules impose such requirements. This proposal would build on those requirements.

The Commission also preliminarily believes that aggregate order flow disclosure on the annual statement could provide a customer with the opportunity to make an informed choice as to whether he/she will do business with a particular broker. Moreover, disclosure of the compensation for an individual order may not adequately or fairly communicate the nature of the arrangement since the market makers' order stream and the broker-dealer's ability to obtain such payment is based upon orders in the aggregate.[47] Furthermore, because not all brokers accept payment for order flow, customers, in reality, do have a choice and, if they object to their broker accepting payment for order flow, they can take their business to another broker.[48]

The Commission invites comment on whether it is adequate to require, as now, disclosure on the confirmation of the receipt of additional compensation with respect to the particular trade, with details available on request. Do customers avail themselves of the additional disclosure made available, and if not, is this from lack of interest or inconvenience? Additionally, comment is requested on whether the existing confirmation requirement should be supplemented or replaced as proposed above, by a combination of disclosure on order confirmations, as well as disclosure of the firm's aggregate receipt of payment for order flow on its

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[42] See NASD 1990 letter, *supra* note 25, at 6–10; Ruder Report, *supra* note 7, at 24; and NASD 1992 Letter, *supra* note 41.

[43] Ruder Report, *supra* note 7, at 24–25.

[44] The Commission intends this to include the NYSE's current practice of offering a cash rebate on every small order (100–2099 shares) delivered via SuperDot and executed by the NYSE specialist. See Securities Exchange Act Release No. 32377 (May 27, 1993), 58 FR 31568. The Commission also solicits comment on whether this obligation should extend to Nasdaq Small-Cap and OTC Bulletin Board securities.

[45] The Commission preliminarily believes, however, that firms that do not accept payment for order flow must still disclose such on the customer's annual account statement.

The Commission invites comment on whether the nature of any non-monetary compensation should be disclosed on customer confirmations.

[46] The Commission also solicits comment on whether this obligation should extend to Nasdaq Small-Cap and OTC Bulletin Board securities.

[47] The CHX argues, however, that simply because a market maker would not pay for a single order while he would pay for a "flow" of orders, it should not be concluded that there is no linkage between the order and the rebate. In support, it notes that payments are a specified amount per share. See January Long Letter, *supra* note 10, at 3. The Ruder Committee responds that the benefits accruing from aggregation cannot be translated after the fact to attach to each individual order, because no firm would be able to negotiate a cash payment, fee reduction or other benefit for a single or small number of orders. Ruder Report, *supra* note 7, at 25–26.

The Commission solicits comment on whether, in addition to disclosure of a firm's aggregate amount of order flow received annually, the following should be disclosed: (1) The amount of monetary payments, discounts, rebates or reduction in fees received by the firm in connection with each customer's account; (2) an aggregate amount received in connection with each customer as a percentage of a firm's total commissions and as a percentage of average cost per share; and (3) the amount of all non-monetary compensation.

[48] The Commission seeks comment on the extent to which customers directly or indirectly may receive the benefit of payment for order flow through discounted commissions. Commentators should discuss whether retail customers have adequate bargaining opportunities to negotiate pass-through of the broker's payment, provided the payment is disclosed adequately.

new account statements and annual statements thereafter.

B. Other Alternatives or Supplements to the Proposal

While the Commission is proposing to require that all payment for order flow be disclosed to investors, the Commission also is considering alternative approaches to addressing payment for order flow and invites commentators to address the relative merits of alternatives to that approach. These alternatives include requiring that payment for order flow be passed through to customers; adopting a decimal-based system for the pricing and reporting of all securities for which transactions are reported on the consolidated tape; or, banning the practice outright as inconsistent with the Act.[49]

Some commentators have argued that the fact that some market makers and specialists are willing to pay for order flow indicates that currently disseminated spreads are too wide.[50] Under the current reporting mechanisms, prices are reported and quotations disseminated in multiples of an eighth of a point (or 12.5 cents).[51] Thus, payments of an additional penny or two cannot be reflected. In a decimal-based system, however, prices are reported in multiples as small as one-hundredth of a point (one cent). Some commentators have recommended that such a system be adopted.[52] Adoption of a decimal-based system would permit narrowed spreads and greater flexibility in the pricing of securities.

Disadvantages of a decimal pricing system include the cost to the market of conversion to such a system. Furthermore, at the Commission roundtable, Bernard Madoff stated that market makers are not willing to make payments for every order they receive, and that the payments are, in effect, compensation to retail firms for bulk order flow.[53] As such, payments might not be reflected in quotations. Under this analysis, decimal pricing may not affect current practices. Finally, because it provides no mechanism for accounting for reciprocal arrangements or other practices of concern to commentators, decimal pricing might have no effect on "soft" inducements for order flow.

It also has been argued that decimal pricing might create an environment where, in effect, time and priority could not be obtained because it always could be possible, as a practical matter, to improve the price by a penny and achieve price priority.[54] Nevertheless, other markets, such as the derivative markets, use decimal pricing effectively, although they may have minimum "tick" requirements, e.g. quotes occur at five cent increments. Thus, the question may not be "the desirability of eighths versus decimals;" rather the question may be whether the Commission affirmatively should encourage a narrower standard quote spread through decimalization. Accordingly, the Commission requests comment on whether a requirement that last sale data and quotations be reported and disseminated in multiples of one-hundredths of a dollar is appropriate or whether any other changes to the method by which trade and quote information is disseminated are appropriate.

Another alternative, as initially proposed by the MSE and subsequently withdrawn,[55] would require a broker or dealer, who, acting as agent, receives cash payments from any market maker for directing order flow, to remit those payments to customers. This alternative would not prohibit a market maker from making cash payments for order flow. It would, however, prohibit a broker-dealer from retaining these payments for its own benefit. The Commission solicits comment on this alternative as well as comments as to whether the pass-through to customers should include any volume-related compensation, such as research, products or services, and rebates and reciprocal agreements for the provision of order flow, clearing or other services, rather than limiting the proposal to cash payments for order flow.

Another alternative is to prohibit payment for order flow practices as being inconsistent with the Act.[56] Some argue that because the purpose, or at least the likely effect of order flow payments could be to subvert the broker's exercise of independent, professional judgement in selecting the market in which to seek execution of customers' orders and determining whether to buy or sell on behalf of customers at prices offered by market makers who offer order flow payments, such payments should be barred explicitly by the Commission as fraudulent.[57] Moreover, some suggest that the making of order flow payments to and the receipt of such payments by brokers raise significant questions under the federal and state statutes meant to prevent commercial bribery and kickbacks.[58] The Commission solicits comment on whether payment for order flow practices should be banned altogether in the interest of investor protection and market structure concerns.

V. Request for Comment

The Commission invites comment on all the issues raised in this release, including without limitation the proposed amendments to Rule 10b-10, the adoption of rule 11Ac1–3 regarding enhanced disclosure of payments for order flow, and other approaches that address payment for order flow practices. In connection with any of these alternatives, commentators are asked to address whether they believe the receipt of payment for order flow affects the quality of execution customers receive.[59]

Commentators also are encouraged to discuss the competitive effects of

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[49] See Klein Letter, *supra* note 21, for a further discussion of the bases for this potential response to the issue of payment for order flow.

The United Kingdom Securities and Investments Board ("SIB") published a Consultative Paper that would ban the practice of payment for order flow in the United Kingdom. It states:

SIB has viewed, with concern, the growth in the United States of the practice of a market maker paying agency brokers in 'hard dollars' in return for the brokers directing business to that market maker. SIB would not be prepared to accept the practice of agency brokers tying to one or several market makers in this way, but considers that proposed core rule 1 (inducements) is sufficiently robust to prevent the practice being introduced in the United Kingdom.

SIB Consultative Paper No. 46, Soft Commission Arrangements in the Securities Market: "Soft for Net" 5 (Nov. 1990).

[50] Coffee, Brokers and Bribery, supra note 13, at 5.

[51] The Commission, of course, recognizes that a fractional quotation system is used in many markets and that such fractions can be refined to ever smaller increments, e.g., 1/64th, which could approximate the flexibility of a decimal-based quotation system.

[52] See letter from Anson M. Beard, Jr., Managing Director, Morgan Stanley & Co., to Thomas E. Haley, Chairman, Consolidated Tape Association ("CTA"), dated January 11, 1989. See also letter from Junius W. Peake, Professor, University of Northern Colorado, College of Business Administration, and Morris Mendelson, Professor, University of Pennsylvania, Wharton School, to Jonathan G. Katz, Secretary, SEC, dated November 3, 1992.

The CTA considered this proposal and rejected it, stating that the issue is one which is more properly the province of each of the national securities exchanges and the NASD. Letter from Thomas E. Haley, Chairman, CTA, to Anson M. Beard, Jr., Managing Director, Morgan Stanley & Co., dated March 9, 1989.

[53] See Roundtable Summary, supra note 4, at 16.

[54] See letter from Lawrence E. Harris, Professor, University of Southern California, School of Business Administration, to Jonathan G. Katz, Secretary, SEC, dated October 5, 1992.

[55] See supra notes 5 and 6.

[56] See Klein Letter, *supra* note 21.

[57] *Id.* at 15.

[58] *Id.*

[59] See C. Lee, Purchase of Order Flow and Favorable Executions: An Intermarket Comparison (1991). See also T. McInish and R. Wood, Price Discovery, Volume and Regional/Third Market Trading (Feb. 1992); M. Bloom and M. Goldstein, Displayed and Effective Spreads by Market (Dec. 1992).

payment for order flow activity. Specifically, the Commission is interested in whether payment for order flow has allowed OTC market makers to attract listed order flow away from exchanges. The Commission is interested in examples of actions taken or innovations adopted by exchanges to compete with market makers.[60] In addition, the Commission asks commentators to address whether certain exchange practices, such as rebates or discounts paid to firms that use exchange automated execution systems, are similar to and raise the same issues as do payment for order flow practices.[61]

Currently, payment for order flow generally involves the payment of defined cash amounts per order or per share. Some believe, however, that restricting or even moderately burdening cash payment for order flow could encourage such payments to be restructured into other forms, such as goods or services.[62] Like "soft" payments in the investment management context, payments in goods and services are more difficult to monitor than cash payments and raise issues regarding the efficacy of the services provided and accountability on the part of the market maker and broker.

Comment is requested on the extent of payment for order flow in goods and services at present. Comment also is requested on whether the proposals set forth above would lead to an increase in payment for order flow in goods and services, and the implications of this possible outcome.[63]

In addition to the specific requests for comment set forth above, the Commission requests comment on whether the proposed rule and rule amendments, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on the inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. sec. 603 regarding the proposed rules. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of "small entities" adopted by the Commission for purposes of the Regulatory Flexibility Act. The Analysis notes that the proposed rule and rule amendments would require that payments for order flow be disclosed to customers on the confirmation of each transaction, including the amount of any monetary payment, discount, rebate or reduction in fee received in connection with the transaction. Moreover, the firm would be required to disclose on each new account and thereafter on the annual statement, the firm's policies regarding order routing practices, and information regarding the firm's aggregate amount over the past year of monetary payments, discounts, rebates or fee reductions.

At this time, the Commission is unable to reasonably quantify the impact that the proposed enhanced disclosure rules would have on small broker-dealers. To the extent that disclosure creates a disincentive to pay and accept payment for order flow, the proposals would have an impact in the form of reduced revenues for those accepting payments and reduced costs for those paying for order flow, but the effects are not yet quantifiable. The proposals could also necessitate changes to broker-dealer confirmation systems that generally do not provide that specific information now. Broker-dealers would need to keep records of payment for order flow in order to fulfill the disclosure requirements of the proposed rules. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Jill W. Ostergaard, Attorney, Branch of the National Market System, Office of Self-Regulatory Oversight, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549, (202) 272–7380.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend part 240 of chapter II of title 17 of the Code of Federal Regulations to read as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.10b–10 by redesignating paragraph (a)(7)(iii) as paragraph (a)(7)(iv), adding paragraph (a)(7)(iii) and paragraph (e)(9), to read as follows:

§ 240.10b–10 Confirmation of transactions.

(a) * * *

(7) * * *

(iii)(A) Whether any payment for order flow has been received in connection with a transaction in a national market system security as defined in § 240.11Aa2–1; and

(B) For any monetary payment, discount, rebate or reduction of fee received in connection with a transaction in a national market system security, the amount of such monetary payment, discount, rebate or reduction of fee.

* * * * *

(e) * * *

(9) *Payment for order flow* means any compensation received from any broker-dealer (including market makers), exchange members, or exchanges to which a broker-dealer routes customers orders for execution, including: Monetary payments, research, products or services; reciprocal agreements for the provision of order flow; clearing or other services; adjustment of a broker-dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans and shared interest accrued thereon; discounts and rebates, or any other reduction of or credit against any fee, expense or other

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[60] See, e.g., discussion at note 28, of the CHX's implementation of SuperMAX and Madoff's response.

[61] See NASD 1990 Letter, *supra* note 25, at 7–9; and Pollack Letter, *supra* note 21, at 3–5. See also Midwest Quietly Attracts Upstairs Order Flow Away From NYSE, Securities Week, Apr. 3, 1990, at 9. The CHX argues that payment for order flow and volume discounted exchange fees are distinguishable, because in the first instance, a broker does not pay a fee to the market maker, and thus there is no fee to discount. The CHX believes that if market makers wish to provide a volume discount, they should reduce the charge of the security, which should, in turn, be directed to the customer. See January Long Letter, *supra* note 10, at 6–7. But see Ruder Report, *supra* note 7, at 24.

The NYSE also distinguishes payment for order flow from fee reductions or rebates to member firms because, in its view, cash payments, unlike rebates, may compromise the broker's order routing decision such that the best execution of customer orders is not obtained. Testimony of Richard A. Grasso, Executive Vice Chairman and President, NYSE, Subcommittee Hearing, May 13, 1993.

[62] See, e.g., Pollack Letter, *supra* note 21, at 7, 18–19.

[63] With respect to customer disclosures, in particular, comment is requested on whether payment in goods and services could be addressed by requiring the market maker to disclose to the broker the value, based on cost (or other methods), of the goods and services provided, and requiring the broker to include this value in any mandated disclosures to the customer.

financial obligation of the broker or dealer routing a customer order.

* * * * *

3. Section 240.11Ac1–3 is added to read as follows:

§ 240.11Ac1–3 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any national market system security as defined in § 240.11Aa2–1, unless such broker or dealer informs such customer, upon opening a new account and on an annual basis thereafter, of the following:

(1) The firm's policies regarding receipt of payment for order flow as defined in § 240.10b–10(e)(9), from any broker or dealer (including market makers) exchange members or exchanges to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a description of the nature of the compensation received; and

(2) The aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm on an annual basis that were disclosed pursuant to § 240.10b–10(7)(iii).

Dated: October 6, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25092 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC43

Supplemental Security Income for the Aged, Blind, and Disabled; Treatment of Promissory Notes in Home Replacement Situations

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation explains how the Social Security Administration (SSA) treats promissory notes and similar installment sales contracts and the proceeds generated therefrom when received as a result of the sale of a home which is excluded from resources under the supplemental security income (SSI) program. This proposed regulation provides for application of the "home replacement exclusion" in situations where timely reinvestment of the installments into another home, which is similarly excludable as the principal place of residence, is made.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: Section 1613(a)(1) of the Social Security Act (the Act) excludes an individual's home from resources for purposes of determining eligibility for SSI payments. Further, § 416.1212(d) of our regulations allows the proceeds from the sale of an excluded home to be excluded from resources to the extent the proceeds are intended to be used and are, in fact, used within 3 months of the date of their receipt to purchase a replacement home which is similarly excluded. When that regulation was published in 1975, conventional financial arrangements were the norm. It was reasonable to expect an individual to receive the full purchase price of the former home in cash and to reinvest fully and immediately all cash proceeds from the sale. Therefore, no provision was included in the regulations for the treatment of home purchase financing other than full cash payment at or near the time of sale. Over the years, however, less conventional arrangements involving proceeds other than cash (such as promissory notes or installment sales contracts) have become more common.

Under our regulations defining resources in the SSI program at § 416.1201, promissory notes and installment sales contracts received as proceeds from the sale of a home are considered resources as long as the SSI claimant owns them and has the legal right to convert them to cash to be used for his or her support and maintenance. Such instruments can be excluded, however, under § 416.1212(d) if they are converted to cash and used for the purchase of a replacement home within 3 months of receipt of the note or contract. In fact, prior to September 1989, SSA required that they be so converted in order to be considered an excluded resource. Accordingly, under this interpretation, the claimant's options were limited to selling the house for cash (possibly below market value) or liquidating the promissory note or installment sales contract likely at a substantial loss. Either of these options could have jeopardized the opportunity to acquire or maintain a replacement home without losing SSI eligibility.

On September 11, 1986, the United States Court of Appeals for the Ninth Circuit rejected this interpretation of § 416.1212(d) in the case of *Hart* v. *Bowen*, 799 F.2d 567. The *Hart* case involved an individual who sold her home under an installment sales contract. She applied the downpayment she received toward the downpayment on a new home. She also applied each of the monthly installment payments she received toward the mortgage on the new home. Her SSI benefits were terminated because the installment contract from the sale of her former home constituted an excess resource. The Ninth Circuit Court of Appeals found that the current market value of an installment sales contract resulting from the sale of an individual's excluded home is part of the value of the replacement home and thus, excluded from countable resources, provided the payments generated by the contract were reinvested timely in the excluded replacement home. In May 1987, as a result of the decision rendered by the Ninth Circuit in *Hart* v. *Bowen*, SSA issued Acquiescence Ruling AR 87–3(9) to comply with the decision in the Ninth Circuit States.

In September 1989, SSA changed its national practice and published Social Security Ruling SSR 89–5p, effective September 6, 1989. The ruling explained that the value of an installment sales contract constitutes a "proceed" from the sale of an excluded home which can be excluded from resources under § 416.1212(d) if: (a) The contract results from the sale of an individual's home as described in § 416.1212(a); (b) within 3 months of receipt (execution) of the contract, the individual purchases a replacement home which also fits the description in § 416.1212(a); and (c) all contract generated sale proceeds are reinvested

in the replacement home within 3 months of receipt of such proceeds. In addition, the ruling provided that when payments against the principal that result from the installment sales contract are being reinvested timely (i.e., within 3 months of receipt) in a new home, such payments are also excluded from resources. The ruling further provided that if the home replacement exclusion is not applicable because one or more installment payments have not been timely reinvested, the exclusion may be applied effective with the month following the month of receipt of a timely reinvested payment.

Regulation

This proposed regulation would codify SSR 89–5p and reflect more completely our policy on the treatment of proceeds from the sale of an excluded home by designating the existing text in § 416.1212 paragraph (d) as paragraph (d)(1), and adding two new paragraphs (d)(2) and (d)(3), to explain the conditions under which the value of a promissory note or similar installment sales contract, and other proceeds from the sale, consisting of the downpayment and monthly installment payments towards the principal, will be excluded from being considered SSI resources. In addition, we are adding new paragraphs (e), (f), and (g) to § 416.1212 to explain the effects on SSI eligibility of failure to reinvest installment payments timely and the receipt of interest payments. When a final rule is published after the comment period has expired and any comments have been considered, both SSR 89–5p and AR 87–3(9) will be rescinded.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291. The current administrative and program costs are estimated to be negligible (less than 30 workyears and $1 million per fiscal year). Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed regulation imposes no reporting/recordkeeping requirements requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because this regulation will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act of 1980, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807—Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income.

Dated: May 27, 1993.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: July 20, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 416 of Chapter III of Title 20, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66; 87 Stat. 154.

2. Section 416.1212 is amended by redesignating the existing text in paragraph (d) as paragraph (d)(1), adding new paragraphs (d)(2) and (d)(3), and adding new paragraphs (e), (f) and (g) to read as follows:

§ 416.1212 Exclusion of the home.

* * * * *

(d) *Proceeds from the sale of an excluded home.*

(1) * * *

(2) The value of a promissory note or similar installment sales contract constitutes a "proceed" which can be excluded from resources if—

(i) The note results from the sale of an individual's home as described in § 416.1212(a);

(ii) Within 3 months of receipt (execution) of the note, the individual purchases a replacement home as described in § 416.1212(a) (see paragraph (e) of this section for an exception); and

(iii) All note-generated proceeds are reinvested in the replacement home within 3 months of receipt (see paragraph (f) of this section for an exception).

(3) In addition to excluding the value of the note itself, other proceeds from the sale of the former home are excluded resources if they are used within 3 months of receipt to make payment on the replacement home. Such proceeds, which consist of the downpayment and that portion of any installment amount constituting payment against the principal, represent a conversion of a resource.

(e) *Failure to purchase another excluded home timely.* If the individual does not purchase a replacement home within the 3-month period specified in paragraph (d)(2)(ii) of this section, the value of a promissory note or similar installment sales contract received from the sale of an excluded home is a countable resource effective with the first moment of the month following the month the note is executed. If the individual purchases a replacement home after the expiration of the 3-month period, the note becomes an excluded resource the month following the month of purchase of the replacement home provided that all other proceeds are fully and timely reinvested as explained in paragraph (f) of this section.

(f) *Failure to reinvest proceeds timely.* (1) If the proceeds (e.g., installment amounts constituting payment against the principal) from the sale of an excluded home under a promissory note or similar installment sales contract are not reinvested fully and timely (within 3 months of receipt) in a replacement home, as of the first moment of the month following receipt of the payment, the individual's countable resources will include:

(i) The value of the note; and

(ii) That portion of the proceeds, retained by the individual, which was not timely reinvested.

(2) The note remains a countable resource until the first moment of the month following the receipt of proceeds that are fully and timely reinvested in the replacement home. Failure to reinvest proceeds for a period of time does not permanently preclude exclusion of the promissory note or installment sales contract. However, previously received proceeds that were not timely reinvested remain countable resources to the extent they are retained.

Example 1. On July 10, an SSI recipient received his quarterly payment of $200 from the buyer of his former home under an installment sales contract. As of October 31, the recipient has used only $150 of the July payment in connection with the purchase of a new home. The exclusion of the unused $50 (and of the installment contract itself) is revoked back to July 10. As a result, the $50 and the value of the contract as of August 1, are included in a revised determination of resources for August and subsequent months.

Example 2. On April 10, an SSI recipient received a payment of $250 from the buyer of his former home under an installment sales contract. On May 3, he reinvested $200 of the payment in the purchase of a new home. On May 10, the recipient received another $250 payment, and reinvested the full amount on June 3. As of July 31, since the recipient has used only $200 of the April payment in connection with the purchase of the new home, the exclusion of the unused $50 (and of the installment contract itself) is revoked back to April 10. As a result, the $50 and the value of the contract as of May 1 are includable resources. Since the recipient fully and timely reinvested the May payment, the installment contract and the payment are again excludable resources as of June 1. However, the $50 left over from the previous payment remains a countable resource.

(g) *Interest payments.* If interest is received as part of an installment payment resulting from the sale of an excluded home under a promissory note or similar installment sales contract, the interest payments do not represent conversion of a resource. The interest is income under the provisions of §§ 416.1102, 416.1120, and 416.1121(c).

[FR Doc. 93–24985 Filed 10–12–93; 8:45 am]

BILLING CODE 4190–29–P

Notices

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 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 AGRICULTURE

Type and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1994

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice sets forth the determination of the Secretary of Agriculture of the types and quantities of agricultural commodities to be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1994.

FOR FURTHER INFORMATION CONTACT: Mary T. Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 720–3573.

Determination

The kinds and quantities of commodities that shall be made available for donation are as follows:

	Commodity	Quantity (metric tons)
Dairy Products .	Butter/butteroil [1]	60,000
	Nonfat dry milk	10,000
Total	.....	70,000

[1] At least 34,000 metric tons must be butter.

Done at Washington, DC, this 1st day of October 1993.

Eugene Moos,

Acting Secretary of Agriculture.

[FR Doc. 93–24879 Filed 10–12–93; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Exemption From Appeal; Point Salvage Sale, Kaibab National Forest, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice; Point salvage sale administrative appeal exemption.

SUMMARY: On October 6, 1993, North Kaibab District Ranger, Raymond D. Brown, made a decision to approve salvage harvesting which will allow for utilization of dead and dying timber resulting from the Point Fire. The Point Fire is located on the Kaibab National Forest.

The 1,762 acre Point Fire in Arizona damaged timber and other resources. The North Kaibab Ranger District has completed an Environmental Analysis on the impacts of salvage harvesting. It will be necessary to recover timber resources in a short, emergency time frame to minimize further deterioration. Damaged timber that is selected to be harvested needs to be removed within 3 months to prevent additional value losses. If the decision document resulting from this Environmental Analysis is appealed under 36 CFR part 217, valuable time in resource recovery is likely to be lost. I have therefore determined that, pursuant to 36 CFR 217.4(a)(11), decisions involving timber recovery within the Point Salvage Sale area are exempt from administrative appeal.

Copies of the Environmental Assessment are available upon request at the North Kaibab Ranger District Office, 430 S. Main, P.O. Box 268, Fredonia, AZ 86022.

DATES: This notice is effective October 12, 1993.

ADDRESSES: Direct comment to: Larry Henson, Regional Forester, Southwestern Region, USDA Forest Service, 517 Gold Avenue SW, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Milo Larson, Director, Timber Management, (505) 842–3240. Direct requests for a copy of the appeal regulation to Pat Jackson at the above address.

Dated: October 6, 1993.

Larry Henson,

Regional Forester.

[FR Doc. 93–25040 Filed 10–12–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the California Advisory Committee to the Commission will convene at 7 p.m. and recess at 9 p.m. on October 29, 1993, and will reconvene at 8 a.m. and adjourn at 12 noon on October 30, 1993, at the Hyatt Regency San Francisco, 5 Embarcadero Center, San Francisco, California 94111. The purpose of the meeting is training and orientation for new Committee members on Commission policies and procedures.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Carney or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25019 Filed 10–12–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Oklahoma Advisory Committee to the U.S. Commission on Civil Rights will meet on October 28, 1993, from 2 p.m. until 8 p.m. at the Doubletree Hotel at Warren Place, 6110 South Yale Avenue, Tulsa, Oklahoma 74136. The purpose of the meeting is to plan for future Committee activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253

(TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 1, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–25020 Filed 10–12–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Transportation and Related Equipment Technical Advisory Committee; Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held November 4, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transpiration and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Election of Chairman.
4. Presentation of Papers or Comments by the Public.
5. Discussion of regulatory issues.
6. Discussion of recent revisions to the International Traffic in Arms Regulations (ITAR).

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA/BXA, room 3886, U.S. Department of Commerce, Washington, DC 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committe and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington DC. For further information or copies of the minutes call 202–482–2583.

Dated: October 7, 1993.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–25125 Filed 10–12–93; 8:45 am]

BILLING CODE 3510–DT–M

National Institute of Standards and Technology

National Voluntary Laboratory Accreditation Program; Calibration Laboratories Technical Guide Workshop

AGENCY: National Institute of Standards and Technology, Commerce

ACTION: Notice; Calibration Laboratories Technical Guide Workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop on November 22 through 24, 1993, to provide interested parties an opportunity to participate in the development of the Technical Guide for Calibration Laboratories. This guide will be used along with the Program Handbook to accredit laboratories in eight fields of calibration (Dimensional, Electromagnetic-DC/Low Frequency, Electromagnetic-RF/Microwave, Ionizing Radiation, Mechanical, Optical Radiation, Thermodynamic, Time and Frequency). A draft Technical Guide will be available for limited distribution to those attending the workshop or to those willing to provide technical comments on the document.

DATES: The workshop will be held on Monday, November 22, 1993, through Wednesday, November 24, 1993, from 9 a.m. to 4 p.m.

PLACE: The workshop will be held at the National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: National Voluntary Laboratory Accreditation Program (NVLAP), National Institute of Standards and Technology, Building 411, room A162, Gaithersburg, MD 20899, by phone at (301) 975–4016, or by FAX at (301) 926–2884. To assist in preparing for the workshop, please inform NVLAP about individuals/organizations planning to attend the workshop.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with the NVLAP Procedures (15 CFR part 7). In a **Federal Register** notice dated May 18, 1992, (Vol. 57, No. 96), the National Institute of Standards and Technology (NIST) announced the establishment of the program for calibration laboratories, "Accreditation for Calibration Laboratories", pursuant to the request by the National Conference of Standards Laboratories in a letter of June 13, 1991, announced in the **Federal Register** of August 21, 1991. Accreditation will be offered to all applicant laboratories that fulfill the requirements of the National Voluntary Laboratory Accreditation Program.

Technical criteria is being developed and incorporated into a draft Technical Guide which will be presented and reviewed at the workshop, and interested parties will have an opportunity to comment. The workshop is part of the NVLAP process of assuring that accreditation programs are of high technical quality, responsive to the technical needs of the metrology community, and are relevant to the needs of those affected by accreditation.

The following plans for the workshop have been established:

1. Purpose: The workshop will provide all interested persons with an opportunity to participate and contribute to the finalization of technical criteria, requirements, and procedures for evaluation and accreditation of laboratories that provide calibration services.

2. Procedure: The workshop will be an informal, nonadversarial meeting. The presiding NIST chairperson(s) will allocate the time available for presentation and discussion of each

issue to be addressed, and will exercise authority as needed to ensure the equitable, efficient and orderly conduct of the meeting.

3. Provisions: This workshop will be open to the public; there is no registration fee, however NVLAP would like notification of attendance due to space limitations. Housing is the responsibility of attendees.

Documents in Public Record

Summary minutes of highlights of the workshop will be made available in the NVLAP program office, Building 411, room A162, at the campus in Gaithersburg, Maryland.

Dated: October 6, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–25071 Filed 10–12–93; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Exemptions for Certain Exchange-Traded Futures and Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On August 16, 1993 the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** a Notice of petitions for exemptions and request for comment relating to proposed exemptions for certain exchange-traded futures and options contracts. 58 FR 43414. The applicable comment period expires on October 15, 1993. See 58 FR 44402 (Aug. 20, 1993). The Commission has received a request for an extension of the comment period on behalf of several commenters. To ensure that all interested parties have an adequate opportunity to submit meaningful comments, the Commission has determined to extend the comment period.

DATE: Written comments must be received by the Commission by the close of business on December 15, 1993.

ADDRESS: Comments should be sent to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20591. Reference should be made to petitions for exemptions for certain exchange-traded futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Pat G. Nicolette, Acting General Counsel, David R. Merrill, Deputy General Counsel, Ellyn S. Roth, Attorney, Office of the General Counsel at (202) 254–9880 or Blake Imel, Acting Director, Division of Economic Analysis at (202) 254–6990, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC, this 6th day of October, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–25202 Filed 10–12–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Amend and Delete Record Systems

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Amend and delete record systems.

SUMMARY: The Office of the Secretary of Defense proposes to amend one system and delete one system of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on November 12, 1993, unless comments are received that would result in a contrary determination.

The deletion will be effective October 13, 1993.

ADDRESSES: Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, Room 5C315, Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** and are available from the address above.

Dated: October 6, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

DWHS P26

SYSTEM NAME:

Protective Services File *(February 22, 1993, 58 FR 10273).*

Reason: Information contained in this system will be subsumed in DWHS P42, 'DPS Incident Reporting and Investigations Case Files'.

AMENDMENTS

DWHS P42

SYSTEM NAME:

DPS Incident Reporting and Investigations Case Files *(February 22, 1993, 58 FR 10277).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add a sentence to the third paragraph 'Persons who may pose a threat to the Secretary of Defense, the Deputy Secretary of Defense and other Senior Defense Officials.'

Insert a new fourth paragraph 'Persons who may pose a threat to the personal safety of themselves or others while in the DPS-controlled jurisdiction.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add a new paragraph to entry 'Documents created in enforcing regulations regarding motor vehicle movement and parking on Federal premises including reports of traffic accidents, traffic violation notices and similar records maintained by DPS.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Information in this system supports the public safety, law enforcement, facility security, and contingency planning functions of the Defense Protective Service. Additional functions supported include information on current and former applicants for the position of Defense Protective Service Officer and Internal Affairs investigative records.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Non-criminal records are destroyed one year after case is closed.

Criminal records are cutoff when case is closed and placed in an inactive file for three years. After three years in the inactive file, the records are retired to the Washington National Records Center for an additional 15 years, after which time they will be destroyed.

Information on current and former applicants for position of DPS Officer

are maintained two years and then destroyed.

Contingency planning and analysis files pertaining to regional, nationwide, and worldwide terrorist organizations and their potential effects of the security of DoD facilities are destroyed when superseded, obsolete, or no longer needed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.'

NOTIFICATION PROCEDURE:

Replace the address in entry to read 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.'

RECORD ACCESS PROCEDURES:

Replace the address in entry to read 'Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.'

* * * * *

DWHS P42

SYSTEM NAME:

DPS Incident Reporting and Investigations Case Files.

SYSTEM LOCATION:

Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the source of an initial complaint or allegation that a crime took place.

Witnesses having information or evidence about any aspect of an investigation.

Suspects in the criminal situation who are subjects of an investigation. Persons who may pose a threat to the Secretary of Defense, the Deputy Secretary of Defense and other Senior Defense Officials.

Persons who may pose a threat to the personal safety of themselves or others while in the DPS-controlled jurisdiction.

Subjects of investigations on noncriminal matters.

Current and former applicants for the position of Defense Protective Service Officer.

Sources of information and evidence. The identity of these individuals may be confidential as appropriate to the subject matter they contribute. These files contain information vital to the outcome of administrative procedures and civil and criminal cases.

Individuals associated with terrorism or terrorist groups and activities and names of regional, nationwide, and worldwide terrorist organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil and administrative remedies may require their partial or total disclosure.

Security files contain information such as name, date and place of birth, address, Social Security Number, education, occupation, experience, and investigatory material.

Contingency Planning/Analysis files contain information such as names and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities. File contains information about regional, nationwide, and worldwide terrorist organizations and their effects on security of DOD facilities under the jurisdiction of DPS. Intelligence briefs; tactical, operational, and strategic informational reports; regional and nationwide contingency analysis; contingency action plans; and patterns and trends of potential or actual terrorists or terrorist groups, or other activities that could disrupt the orderly operation of Defense-owned or controlled facilities over which the DPS has jurisdiction.

Documents created in enforcing regulations regarding motor vehicle movement and parking on Federal premises including reports of traffic accidents, traffic violation notices and similar records maintained by DPS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Cong.); 40 U.S.C 318, as delegated by Administrator, General Services Administration, to the Deputy Secretary of Defense, September 1987, and E.O. 9397.

PURPOSE(S):

Information in this system supports the public safety, law enforcement, facility security, and contingency planning functions of the Defense Protective Service. Additional functions supported include information on current and former applicants for the position of Defense Protective Service Officer and Internal Affairs investigative records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency is aware of a violation or potential violation of civil or criminal law or regulation.

To an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other officials engaged in investigating, or settling a grievance, complaint or appeal filed by an employee.

To various bureaus and divisions of the Department of Justice that have primary jurisdiction over subject matter and location which DPS shares.

To law enforcement agencies which have lawfully participated in and conducted investigation jointly with DPS.

Pursuant to the order of a court of competent jurisdiction, when the United States is party to or has interest in litigation, and using the records is relevant, necessary, and compatible with the purposes of collecting the information.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders in file cabinets. Magnetic media in controlled access areas for both on-line and storage disks.

RETRIEVABILITY:

Paper records by case control number and type of incident. Magnetic files by case control number, name, address, and physical description of subject individual.

SAFEGUARDS:

Paper records are stored in secure filing cabinets in room with built-in-position dial-type combination safe lock. Computer records are maintained in limited access sites on a system protected by a software-controlled password system.

RETENTION AND DISPOSAL:

Non-criminal records are destroyed one year after case is closed.

Criminal records are cutoff when case is closed and placed in an inactive file for three years. After three years in the inactive file, the records are retired to the Washington National Records Center for an additional 15 years, after which time they will be destroyed.

Information on current and former applicants for position of DPS Officer are maintained two years and then destroyed.

Contingency planning and analysis files pertaining to regional, nationwide, and worldwide terrorist organizations and their potential effects of the security of DoD facilities are destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Defense Protective Services, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigators, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to DPS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable. The criminal investigation case file and contingency planning and analysis file may be partially or totally subject to the general exemption.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 93–24983 Filed 10–12–93; 8:45 am]

BILLING CODE 5000–04–F

Department of the Army

Advisory Committee Meeting, Yakima Training Center Cultural and Natural Resources Committee

AGENCY: Headquarters, I CORPS and Fort Lewis, DOD.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 94–463), announcement is made of the following committee meeting.

NAME OF COMMITTEE: Yakima Training Center Cultural and Natural Resources Committee.

DATE OF MEETING: October 20, 1993.

PLACE OF MEETING: Yakima Training Center, Building 266, Yakima, Washington.

TIME OF MEETING: 1 p.m.

PROPOSED AGENDA: Approval of the Interim Training Strategy for the Yakima Training Center; Review of Federal Advisory Committee Status; and Scheduling of Future Meetings.

All proceedings are open. For further information contract Stephen Hart, Chief, Civil Law, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25014 Filed 10–12–93; 8:45 am]

BILLING CODE 5000–03–M

Proposed Revision to the Total Quality Assurance Program (TQAP)

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense has reviewed the TQAP since its implementation beginning February 1992. Several issues have been proposed and changes to the Personal Property Traffic Management Regulation, DOD 4500.34R are pending. The objectives are to streamline the process of evaluating carriers and reduce the administrative work load for transportation offices and carriers.

DATES: Effective January 1994 for the International Program, and February 1994 for the Domestic Program.

ADDRESSES: Comments may be addressed to Commander, Military Traffic Management Command, ATTN: ADCSOPS–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Wells at (703) 756–1585, HQMTMC, ATTN: MT–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: The revision will supersede procedures published in DOD 4500.34R, Personal Property Traffic Management Regulation, the Total Quality Assurance Program pamphlet dated February 1992, and the Domestic Personal Property CONUS Automated Rate System (CARTS) instructions, effective 1 May 1991. It is anticipated that after reviewing industry comments, the rules and procedures set forth in the TQAP pamphlet will be incorporated into the Personal Property Traffic Management Regulation (PPTMR, DOD 4500.34R) as a separate chapter. Summaries of the significant changes or clarification contained in the revision are as follows:

A. All shipments will be scored within 12 months of pickup date. If no destination information is known, the origin PPSO will contact the destination PPSO to conform the status of the shipment and request feedback on carrier performance at time of delivery. In addition this will ensure that if the shipment is still in SIT, points will not be taken away from the carrier for not providing a DD Form 1840. Unless there is evidence in the file to show otherwise, these type of shipments will usually score at 100. In addition, shipments noted as still being in SIT after 12 months of pickup will be flagged to prevent the shipments from being scored again in future cycles.

B. If the PPSO should fail to score any shipment after 12 months of pickup, carriers must identify the shipment during the appeal cycle for the DD Form 2497. Then the shipments will be scored within 45 days and batch mailed according to TQAP procedures. This will allow the carrier an opportunity to appeal if necessary. The score will reflect on the carrier's next semiannual score.

C. A carrier may request a shipment score 120 days after delivery when proof of delivery is provided. A completed DD Form 1840/1840R will be the only acceptable proof of delivery. Origin PPSOs will not be limited to using only origin data for scoring if the shipment is less than a year old.

D. Unless the shipment is still in SIT, shipments may be scored under 12 months (see note (3) below) only if the following criteria exists:

(1) A completed DD Form 1780 or electronic data of information is received from the destination PPSO.

(2) The DD Form 1840 is present and signed by the member and the carrier representative.

(3) Shipments that have been converted to nontemporary storage (NTS) or commercial storage will not require a DD Form 1840 for scoring. The destination PPSO should annotate the DD Form 1780 at the time the shipment is converted and return the form to origin.

E. Carriers will not be required to respond to letters of warning, unless the PPSO specifically requests a written response. However, if the violations continue the carrier is subject to suspension.

F. Regular suspensions will no longer require a 20-day grace period, however, regular suspensions must be preceded by a letter of warning at a minimum of 20 days before the day of suspension.

G. Destination PPSOs may take action against a carrier that has a Letter of Intent (LOI) on file at that destination for outbound service for inbound/destination performance failures.

H. Facsimiles will be permitted to meet the deadline for submitting the DD Form 840. However, it must be followed within 15 days by the original DD Form 1840 signed by the member and driver.

I. On long delivery out of SIT shipments the carrier will return the completed DD Form 619 to the PPSO that authorized the services done.

J. When a carrier is suspended for a volume move, it is suspended for the same type service (i.e., All domestic HHGs), for all shipments out of that activity. The CONUS Automated Rate System (CARTS) pamphlet will be changed.

K. A carrier's score is calculated semiannually based on DD Forms 1780 mailed to the carrier during the evaluation period. The evaluation periods and effective date for the award of traffic are as follows: (Only the evaluation period has changed)

Evaluation period	Effective date	Rate/performance cycle
ITGBL:		
16 Jan–15 Jul.	1 Oct	1 Oct–31 Mar.
16 Jul–15 Jan.	1 Apr	1 Apr–30 Sep.
TGBL:		
16 Feb–15 Aug.	1 Nov	1 Nov–30 Apr.
16 Aug–15 Feb.	1 May	1 May–31 Oct.

L. Shipments turned back by the carrier, or pulled back by the PPSO due to fault of the carrier unable to perform, will be uniformly scored at a score of 40 points. This will include shipments that have been packed and/or picked up by the local agent. The carrier will continue to be charged administrative weight on the TDR if the shipment is turned back or pulled back seven days or less before the established pickup date or any time after the shipment has been picked and/or picked up.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25016 Filed 10–12–93; 8:45 am]

BILLING CODE 5000–03–M

Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: The DOD is expanding its Defense Transportation Tracking System (DTTS) to include Satellite Monitoring (SM) of Uncategorized Division 1.1 through 1.3 Ammunition and Explosives (A&E) effective October 1, 1993. This provides notice of Phase III in the DTTS program expansion. The DOD currently requires SM for all security risk categorized Arms, Ammunition, and Explosives (AA&E) shipments. Categorized AA&E shipments total about 32,000 annually. In Phase III, an additional 17,000 uncategorized shipments are to be tracked with SM.

ADDRESSES: Commander, Military Traffic Management Command, ATTN: MTOP–T 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. John Piparato, HQMTMC, 5611 Columbia Pike, Falls Church, VA 22041–5050, telephone (703) 756–1094.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to provide final notice and information on the final phase of the expansion of DTTS.

The DTTS General Officer Steering Committee (GOSC), comprised of membership from the military services and defense Logistics Agency have approved expansion of the DTTS to track Uncategorized Division 1.1 through 1.3 A&E effective October 1, 1993.

This represents part of a phased plan designed to expand tracking by DTTS to Security Risk Categorized (SRC) AA&E and Uncategorized Division 1.1 through 1.3 A&E shipments. SRC items, totalling about 32,000 shipments annual, are currently being tracked by DTTS and 17,000 additional, uncategorized A&E shipments are expected to be tracked by DTTS each year.

The DTTS GOSC also approved that, effective October 1, 1993, charges for SM will be reduced from the current maximum level of $.22 per mile to a maximum of $.13 per mile. Accordingly, on or before that date, motor carriers wishing to participate in this program will be required to adjust SM charges in their applicable tenders on file with MTMC to reflect the revised per mile charge. SM charges as an accessorial service will be paid to carriers providing this service at a rate of a maximum $.13 per mile for shipments picked up on or after October 1, 1993.

In the July 6, 1993, **Federal Register** (58 FR 36188), MTMC provided notice of the expansion of DTTS, including a statement that as of January 1, 1994, charges for SM should be included in the linehaul rates. As a result of comments received in that notice, the DOD will be meeting with members of the munitions carrier industry to review the DTTS expansion and the procedures to be effective January 1, 1994.

Carriers participating in the transportation of DOD SRC AA&E and uncategorized A&E are advised that this provides final notice on Phase III expansion of the DTTS program. Comments should be made to Commander, Military Traffic Management Command, ATTN: MTOP–T (John Piparato), 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1094.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–25015 Filed 10–12–93; 8:45 am]

BILLING CODE 5000–03–M

DEPARTMENT OF EDUCATION

[CFDA Number: 84.267]

State Postsecondary Review Program; Notice Extending the Closing Dates for Participation in the State Postsecondary Review Program in Fiscal Year 1993

Deadline for Submission of Plan and Budget: On July 14, 1993, the Secretary published a notice in the **Federal Register** establishing three closing dates for participating in the State Postsecondary Review Program in fiscal year 1993. The purpose of this notice is to extend all three closing dates. This action is taken as a result of the delay in receiving the July 14, 1993 **Federal Register** notice by some of the States and territories, which prevented them from submitting their applications by the first closing date.

The Secretary believes that all States and Territories desiring to participate in the State Postsecondary Review Program in the first year of the program should

be allowed to do so. Accordingly, the Secretary extends the closing date for the submission of an initial plan and budget from September 10, 1993 to October 15, 1993, the closing date for the submission of an acceptable plan and budget from October 22, 1993 to November 1, 1993, and the closing date for the submission of an acceptable agreement from October 22, 1993 to November 1, 1993.

FOR INFORMATION CONTACT: Mr. Kenneth R. Waters, Acting Branch Chief, State Liaison Branch, U.S. Department of Education, 400 Maryland Avenue SW., room 3036, ROB–3, Washington, DC 20202–5346. Telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1099a–1099a–3.

Dated: October 5, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–24982 Filed 10–12–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–93 Nina-Cert]

Applications for Certification of Net Income Neutrality From Puget Sound Power & Light Co., Portland General Electric Co., Potomac Electric Power Co., & Minnesota Power

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy has received applications for certification of net income neutrality from Portland General Electric Company, Portland Electric Power Company, Puget Sound Power and Light Company, and Minnesota Power. Interested parties may submit written comments on this application at the address specified below on or before November 8, 1993. Copies of the applications, responses to any requests for additional information, and comments will be available for review and copying by the public at: the Freedom of Information Reading Room; U.S. Department of Energy; 1000 Independence Avenue SW.; Washington, DC 20585; (202) 586–6020, Monday through Friday, excluding federal holidays, between the hours of 9 a.m. and 4 p.m.

DATES: The applications from Portland General Electric Company, the Potomac Electric Power Company, Puget Sound Power and Light Company, and Minnesota Power were determined to be complete and accepted for filing on October 4, 1993. Comments on each of these applications will be accepted until 5 P.M. Eastern Standard Time on November 8, 1993 at the address listed below.

ADDRESSES: Comments should be sent to: U.S. Department of Energy; Office of Energy Efficiency and Renewable Energy; EE–10, room 6C–036; 1000 Independence Avenue SW.; Washington, DC 20585. Attention: Net Income Neutrality Certification Docket EE–93–NINA–CERT, for Puget Sound Power and Light Company, Application 4; for the Portland General Electric Company, Application Number 6; for Potomac Electric Power Company, Application 7; and for Minnesota Power, Application Number 8.

FOR FURTHER INFORMATION CONTACT: Diane B. Pirkey; U.S. Department of Energy; EE–14; 1000 Independence Avenue SW.; Washington, DC 20585; (202) 586–9839.

SUPPLEMENTARY INFORMATION: Under the 1990 Clean Air Act Amendments, an investor-owned electric utility, with rates regulated by a state utility regulatory authority, seeking sulfur-dioxide emission allowances from the Conservation and Renewable Energy Reserve for emissions avoided by the installation of applicable conservation measures, must obtain certification of net income neutrality from the Secretary of Energy. This certification verifies that the state regulatory authority has established rates and charges which ensure that the net income of such utility after implementation of conservation measures is at least as high as such net income would have been if the conservation measures had not been implemented. 42 U.S.C. 7651c(f)(2)(B)(iv) as amended by Public Law 101–549.

These requirements are further addressed in the Final Rule adopted by the U.S. Environmental Protection Agency, published in the **Federal Register**, January 11, 1993, 58 FR 3590; see: 40 CFR 72.2, providing a definition of net income neutrality; 40 CFR 73.82(b), establishing application requirements; and 40 CFR 73.83, describing generally the Secretary of Energy's review of such applications. Additional information regarding the Department of Energy's review of net income neutrality applications is available in the Notice on Applications From Investor-Owned Utilities for Certification of Net Income Neutrality published in the **Federal Register** for August 9, 1993 at 58 FR 42308.

Issued in Washington, DC, on September 30, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 93–25120 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 2407–006, Alabama 2408–007]

Alabama Power Co.; Availability of Draft Environmental Assessment

October 6, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the Yates and Thurlow Projects, located on the Tallapoosa River, in Tallapoosa and Elmore Counties, Alabama and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the environmental impacts of the existing projects and has concluded that approval of the projects, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 45 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2407 to all comments. For further information, please contact John Smith, Environmental Coordinator, at (202) 219–2460.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24998 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–00346T Colorado–47]

State of Colorado; NGPA Amended Determination by Jurisdictional Agency Designating Tight Formation

October 6, 1993.

Take notice that on September 23, 1993, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), amended its notice of determination that was filed in the above-referenced proceedings on October 20, 1992, pursuant to § 271.703(c)(3) of the Commission's regulations. The October 20, 1992 notice determined that the Upper Lewis Sand (Blue Gravel Member) underlying certain lands in Moffat County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978.

The amended notice of determination reduces the geographical area recommended for tight formation designation to cover only the state-owned lands described as follows:

Township 9 North, Range 90 West
Section 31: W/2
Township 9 North, Range 91 West
Section 36: All

The notice of determination also contains Colorado's findings that the referenced portion of the Upper Lewis Sand (Blue Gravel Member) 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. 93–24995 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–48–000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on September 30, 1993, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 19, with a proposed effective date of November 1, 1993.

ANR states that the purpose of the instant filing is to update ANR's recently approved annual redetermination of its fuel matrix in order to reflect the implementation of restructured services effective November 1, 1993.

ANR states that copies of the filing have been served on all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 311 of the Commission's Rules of Practice and Procedure 18 CFR 395.211. All such protests should be filed on or before October 14, 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspections.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25009 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–31–000]

Arkla Energy Resources Co.; Filing

October 6, 1993.

Take notice that on October 1, 1993, Arkla Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective November 1, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 4.1

AER states that these revised tariff sheets are filed to adjust AER's fuel tracker pursuant to the Stipulation and Agreement approved in Docket No. RP93–3–000 on September 23, 1993.

AER states that a copy of the filing has been mailed to each of AER's customers and interested state commissions.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25004 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–33–001]

El Paso Natural Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993, El Paso Natural Gas Company (El Paso) tendered for filing, pursuant to part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations Under the Natural Gas Act, a recalculation of its Throughput Surcharge reflecting the annual mainline thoughput at Docket No. RP92–214–000 included in El Paso's Offer of Settlement in Restructuring, Rate and Related Proceedings (Settlement) at Docket No. RS92–60–000, et al., filed on January 29, 1993.

El Paso states that on August 31, 1993 at Docket No. TM94–1–33–000, El Paso filed a revision to its Throughput Surcharge to become effective October 1, 1993. In such filing El Paso revised the interest related to the take-or-pay costs included in the calculation of the Throughput Surcharge. Such calculation utilized the throughput levels underlying its then currently effective filed rates at Docket No. RP92–214–000. El Paso stated that it would recalculate the Throughput Surcharge reflecting the annual mainline throughput at Docket No. RP92–214–000 included in its Settlement filed on January 29, 1993, upon final Commission order in that proceeding. By letter order issued September 30, 1993 at Docket No. TM94–1–33–000, the Commission accepted El Paso's proposed Throughput Surcharge of $0.0417 per dth, subject to El Paso revising the Throughput Surcharge reflecting the annual mainline Throughput at Docket No. RS92–60–000, et al., that become effective October 1, 1993.

El Paso further states that on September 14, 1993 it filed in compliance with the order approving the Settlement certain implementing tariff sheets, which among other things, included Statement of Rates tariff sheets restating the Throughput Surcharge rate to $0.0376 per dth to become effective October 1, 1993. The calculation of such rate is based on the take-or-pay costs approved at Docket No. RP93–108–000 and the mainline annual throughput underlying El Paso's Settlement. However, such Throughput Surcharge

did not reflect the revised interest included at Docket No. TM94–1–33–000, since approval by the Commission had not been received at the time of filing.

El Paso states that it now has recalculated the Throughput Surcharge approved at Docket No. TM94–1–33–000 to reflect the Settlement annual mainline throughput of 1,241,000,000 dth. Therefore, the tendered tariff sheets, when accepted by the Commission and permitted to become effective, serve to update the Throughput Surcharge based on the approved take-or-pay costs at Docket No. TM94–1–33–000 and the throughput levels underlying El Paso's approved Settlement rates at Docket No. RS92–60–000, et al.

Additionally, El Paso states that it has restated on the tendered tariff sheets the annual charge adjustment of $0.0025 per dth, which was also approved at Docket No. TM94–1–33–000.

El Paso respectfully requests all necessary waivers of the Commission's Regulations so as to permit the tendered tariff sheets to become effective October 1, 1993 and supersede the counterpart tariff sheets filed on September 14, 1993 in compliance with the Settlement at Docket No. RS92–60–000, et al.

El Paso states that copies of the filing were served upon all interstate pipeline system transportation customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rule and Regulations. All such protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25005 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES94–1–000]

Electric Energy, Inc.; Application

October 6, 1993.

Take notice that on October 1, 1993, Electric Energy, Inc. filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $70 million of short-term notes under the terms of certain unsecured revolving credit agreements or under terms substantially similar thereto from time to time over the 24 month period immediately following the date of the Commission's approval of the application.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 18, 1993. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24994 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1994 Utah]

Heber Light & Power Co.; Intent To File an Application for a New License

October 6, 1993.

Take notice that Heber Light & Power Company, the existing licensee for the Snake Creek Hydroelectric Project No. 1994, filed a notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1994 was issued effective December 1, 1949, and expires June 30, 1998.

The project is located at the outlet of a mine tunnel in Wasach County, Utah. The principal works of the Snake Creek Project include a pipeline and penstock, 12 inches in diameter and about 1,500 feet long, originating at the outlet of a mine tunnel; a concrete and brick powerhouse with 800 Kw installed in one unit; an outdoor substation; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 31 South 100 West, Heber City, Utah 84032, telephone (801) 654–1581.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 30, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24997 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–965–000]

Idaho Power Co.; Notice of Filing

October 6, 1993.

Take notice that on September 21, 1993, Idaho Power Company (Idaho) tendered for filing a Service Agreement under FERC Electric Tariff, Second Revised Volume No. 1 with El Paso Electric Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24992 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–110–000]

Iroquois Gas Transmission System L.P.; Proposed Changes in FERC Gas Tariff

October 6, 1933.

Take notice that on October 1, 1993, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of November 1, 1993:

Third Revised Sheet No. 4
Third Revised Sheet No. 5

Iroquois states that the above tariff sheets were filed to reflect a reduction to its Deferred Asset Surcharge in compliance with the Commission's

March 11, 1991 Order in Docket No. CP89–634–004 and the December 21, 1992 Order in Docket No. CP89–634–021.

Iroquois states that copies of the filing were served upon Iroquois' jurisdictional customers, interested state regulatory commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., the Commission's Rules of Practice and Procedures. All such petitions or protests should be filed on or before October 14, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25010 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–40–003]

Louisiana-Nevada Transit Co.; Request for Limited Waiver of Reporting Requirements Under Part 284

October 6, 1993.

Take notice that on September 30, 1993, Louisiana-Nevada Transit Company (LNT) filed a Request for Limited Waiver of Reporting Requirements under part 284. LNT states that its Request for Limited Waiver seeks waivers of reporting requirements similar to those granted by the Commission for other natural gas pipeline companies.

Specifically, LNT requests a one-time waiver of the part 284 initial and termination reporting requirements to allow LNT to submit these changes under the subsequent reporting requirements. LNT also requests a waiver of the subsequent reporting requirements to permit LNT to file, on a one-time basis, a consolidated report listing any material changes to its existing ST dockets. LNT requests a one-time wavier of required initial reports for a service that has not been previously reported or a termination report for an existing service that will be continued. LNT requests limited waiver of the subsequent reporting requirements for changes to receipt and delivery points, and waiver of reporting requirements for capacity releases other than permanent releases under part 284.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 27, 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 to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25000 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–15105T Oklahoma–52]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

October 6, 1993.

Take notice that on September 29, 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 Spiro Formation, underlying a portion of Latimer 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 follows:

Township 4 North, Range 19 East
Sections 4–9: All
Sections 16–18: All
Township 4 North, Range 18 East
Sections 1–5: All
Sections 8–17: All
Sections 20–29: All
Section 32: All
Sections 34–36: All

The notice of determination also contains Oklahoma's and the Bureau of Land Management'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. 93–24996 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–172–000]

Panhandle Eastern Pipeline Co.; Notice of Technical Conference

October 6, 1993.

In the Commission's order issued on September 22, 1993, in the above-captioned proceeding, the Commission ordered that a technical conference be convened to resolve issues raised by the filing. The conference to address the issues has been scheduled for October 28, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24999 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–28–000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets listed on Appendix A to the filing. The proposed effective date of the revised tariff sheets is November 1, 1993.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. Panhandle further states that the revised tariff sheets filed herewith reflect the following changes to the Fuel Reimbursement Percentages.

(1) A (0.06)% decrease in the Gathering Fuel Reimbursement Percentage,

(2) A .01% increase in the Field Zone Fuel Reimbursement Percentage,

(3) A .04% increase in the Market Zone Fuel Reimbursement Percentage,

(4) No change in the Field Area Storage Percentages and

(5) A .01% increase in the Injection and .10% increase in the Withdrawal in the Market Area Storage Fuel Reimbursement Percentages.

Panhandle states that copies of this letter and enclosures have been served

on all customers subject to the tariff sheets and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 14, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25001 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–970–000]

Southern California Edison Co.; Notice of Filing

October 6, 1993.

Take notice that on September 24, 1993, Southern California Edison Company (Edison) tendered for filing the following amendment to the Edison-Vernon firm Transmission Service Agreement for Vernon's Purchases from Salt River Project with the City of Vernon, Commission Rate Schedule No. 263:

Amendment No. 1 to the Edison-Vernon Firm Transmission Service Agreement for Vernon's Purchases from Salt River Project Between Southern California Edison Company and City of Vernon (Amendment)

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

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–24993 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Eighth Revised Sixth Revised Sheet No. 28, with a proposed effective date of October 1, 1993.

TGPL states that the purpose of the instant filing is to track in the charges payable under TGPL's Rate Schedule S–2 the storage inventory charge assessed by Texas Eastern Transmission Corporation (TETCO) to TGPL under TETCO's Rate Schedule X–28. Specifically, TGPL proposes to recover from its Rate Schedule S–2 customers the cost of purchasing approximately 12 Bcf of top gas inventory from TETCO pursuant to TETCO's Rate Schedule X–28.

TGPL states that copies of the instant filing are being mailed to its S–2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 14, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25002 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 6, 1993.

Take notice that on October 1, 1993 Trunkline Gas Company (Trunkline), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 1, 1993:

Second Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 10

Trunkline states that this inaugural filing being made in accordance with Section 22 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, First Revised Volume No. 1, also complies with the Commission's Orders dated March 2, 1993 and August 4, 1993 in Docket Nos. RP89–160–000 and RP92–165–000, directing Trunkline to use an "additive zone" approach for transportation rates and fuel reimbursement percentages.

Trunkline further states that the revised tariff sheets filed herewith reflect: (1) A 0.22% (Field Zone to Zone 2), 0.27% (Field Zone to Zone 1), a 0.40% (Field Zone only), a 0.25% (Zone 1 to Zone 2), a 0.30% (Zone 1 only) and a 0.14% (Zone 2 only) increase to the Current Fuel Reimbursement Percentages, pursuant to § 22.3; and (2) no change in the Annual Fuel Reimbursement Surcharge, pursuant to § 22.4.

Trunkline states that copies of this filing have been served on all jurisdictional transportation customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 14, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–25003 Filed 10–12–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearing and Appeals

Cases Filed During the Week of September 24 Through October 1, 1993

During the Week of September 24 through October 1, 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: October 5, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 17 through October 1, 1993]

Date	Name and location of applicant	Case No.	Type of submission
9/28/93	Armen Victorian Nottingham, England	LFA–0323	Appeal of an Information Request Denial. If granted: The September 15, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded, and Armen Victorian would receive access to copies of a Concept Paper entitled "Non-Lethal Weapons" and a White Paper entitled "Concept for an Immobilization Projectile."
9/29/93	Texaco/A & W Texaco Danbury, CT	RR321–135	Request for Modification/Rescission in the Texaco Refund Proceeding. If granted: The September 15, 1993 Decision and Order (Case No. RF321–14495) issued to A & W Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
7/12/93	Spearman Independent School District Spearman, TX.	RR272–117	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The June 28, 1993 Decision and Order (Case No. RF272–80314) issued to Spearman Independent School District would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
9/24/93 thru 10/1/93.	Atlantic Richfield applications received.	RF304–14584 thru RF304–14613.
9/24/93 thru 10/1/93.	Texaco refund applications received.	RF321–19911 thru RF321–19917.
9/24/93 thru 10/1/93.	Crude oil refund applications received.	RF272–94901 thru RF272–94910.
9/24/93	Circle Syracuse Taxi.	RF300–21755.
9/27/93	Highway 14 Canal.	RF346–101.
9/27/93	Evans Canal Station.	RF346–102.

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of refund proceeding/name of refund application	Case No.
9/27/93	Airport Road Canal.	RF346–103.
9/27/93	Milton Carl	RF346–104.

[FR Doc. 93–25123 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

Cases Filed During the Week of September 17 Through September 24, 1993

During the Week of September 17 through September 24, 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.

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: October 5, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 17 through September 24, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 17, 1993	Texaco/Paul's Texaco, Pawtucket, RI 02861.	RR321–134	Request for modification/rescission in the Texaco refund poceeding. If granted: The October 28, 1992 Decision and Order (Case No. RF321–1777) issued to Paul's Texaco would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.
Sept. 20, 1993	Richard L. Morse, Santa Fe, NM	LFA–0322	Appeal of an information request denial. If granted: The August 17, 1993 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs would be rescinded and Richard L. Morse would receive access to a more thorough search of DOE records related to his security clearance.
Sept. 22, 1993	David Ramirez, East Isup, NY	LWA–0002	Request for hearing under DOE contractor employee protection program. If granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of David Ramirez that reprisals were taken against him by management officials of Brookhaven National Laboratory Associated Universities, Inc. (BNL) as a consequence of his having disclosed safety concerns to BNL.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case number
9/17/93 thru 9/24/93.	Atlantic Richfield, Applications Received.	RF304–14553 thru RF304–14583.
9/17/93 thru 9/24/93.	Texaco Refund, Applications Received.	RF321–19901 thru RF321–19910.
9/17/93 thru 9/24/93.	Crude Oil Refund, Applications Received.	RF272–94891 thru RF272–94900.
9/21/93	Johnston Street Canal.	RF346–100.

[FR Doc. 93–25122 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Cases Filed During the Week of September 10 Through September 17, 1993

During the Week of September 10 through September 17, 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, D.C. 20585.

Dated: October 5, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Sept. 10 through Sept. 17, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 13, 1993	Deborah L. Abrahamson, DeSoto, TX	LFA–0321	Appeal of an information request denial. If granted: The August 11, 1993 Freedom of Information Request Denial issued by the Office of the Director of Personnel would be rescinded, and Deborah L. Abrahamson would receive access to correspondence between the Office of Personnel and the Superconducting Super Collider Project Office (SSCPO), draft responses to Enclosures 5 and 6, and draft responses to the Office of Personnel from SSCPO.
Sept. 14, 1993	Bolivar Central Schools, Memphis, TN	RR272–116	Request for modification/rescission in the crude oil refund proceeding. If granted: The July 22, 1993 Decision and Order (Case No. RF272–94611) issued to Bolivar Central Schools regarding the firm's Application for Refund submitted in the crude oil refund proceeding would be modified.
Do	Gulf/Winston C. Bresett, Cordova, TN	RR300–254	Request for modification/rescission in the Gulf refund proceeding. If granted: An April 13, 1993 letter dismissing an Application for Refund filed by Winston C. Bressett (Case No. RF300–21729) in the Gulf refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/10/93 thru 9/17/93.	Atlantic Richfield refund applications received.	RF304–14517 thru RF304–14552.
9/10/93 thru 9/17/93.	Texaco Oil refund applications received.	RF321–19880 thru RF321–19900.
9/10/93 thru 9/17/93.	Crude Oil refund applications received.	RF272–94879 thru RF272–94890.
9/10/93	Sanderson Farms, Inc.	RC272–214.
9/14/93	Staggs Tire Center.	RF346–93.
9/14/93	Bernard Canal Service Station.	RF346–94.
9/14/93	Highway 14 by Paso Canal.	RF346–95.
9/14/93	Highway 14 Canal Station.	RF346–96.
9/14/93	Cameron Bayon Service Station.	RF346–97.
9/14/93	Cameron Boyon Service Station.	RF346–98.
9/14/93	Mount Vernon Mills, Inc.	RC272–215.
9/14/93	Eam Hardt Lumber Company.	RF300–21753.
9/16/98	Arnaudville Canal Center.	RF346–99.
9/16/93	James Gulf	RF300–21754.

[FR Doc. 93–25121 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 93–83–NG]

Crestar Energy Marketing Corp.; Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Crestar Energy Marketing Corp. authorization to import, near Emerson, Manitoba, up to 15,000 Mcf per day of natural gas from Canada over a period of eight years ending October 31, 2001. This gas will be sold to Northern States Power Company.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25111 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–99–NG]

Pacific Gas & Electric Co., Electric Supply Business Unit; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas and Electric Company, Electric Supply Business Unit, blanket authorization to import up to 305 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25112 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–100–NG]

Pacific Gas & Electric Co., Gas Supply Business Unit; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Pacific Gas and Electric Company, Gas Supply Business Unit, blanket authorization to import up to 790 Bcf of natural gas from Canada over a two-year term, beginning on the date of first import delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25113 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–90–NG]

Philbro Oil & Gas, Inc., Blanket Authorization To Import and Export Natural Gas From and To Canada and To Import Liquefied Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Philbro Oil & Gas, Inc. (Philbro) blanket authorization to import from Canada up to a combined total of 200 Bcf of natural gas and liquefied natural gas and to export to Canada up to 200 Bcf of natural gas over a two-year term beginning on the date of first delivery of either imports or exports.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25114 Filed 10–12–93; 8:45 am]
BILLING CODE 6450–01–P

[FE Docket No. 93–89–NG]

Tennessee Gas Pipeline Co., Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tennessee Gas Pipeline Company blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25115 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–98–NG]

Vermont Gas Systems, Inc., Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Vermont Gas Systems, Inc. (Vermont Gas) authorization to import up to 20 Bcf of natural gas from Canada and to export up to 20 Bcf of natural gas to Canada over a two-year term beginning on the date of first delivery of either imports or exports after December 16, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25116 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–94–NG]

Wisconsin Fuel & Light Co., Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Fuel & Light Company (WF&L) authorization to import up to 10,398 Mcf per day of Canadian natural gas for ten years beginning November 1, 1993. This gas would be imported from ProGas Limited and Western Gas Marketing Limited as a result of ANR Pipeline Company's unbundling of its gas supply arrangements under the restructuring requirements of Order 636 issued by the Federal Energy Regulatory Commission.

WF&L's order is available for inspection and copying in the Office of Fuels Program Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25117 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–91–NG]

Wisconsin Gas Co., Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Wisconsin Gas Company blanket authorization to import from Canada up to 200 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25118 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–93–NG]

Wisconsin Public Service Corp., Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted Wisconsin Public Service Corporation (WPSC) authorization to import up to 38,459 Mcf per day of Canadian natural gas for ten years beginning November 1, 1993. This gas would be imported from ProGas Limited and Western Gas Marketing Limited as a result of ANR Pipeline Company's unbundling of its gas supply arrangements under the restructuring requirements of Order 636 issued by the Federal Energy Regulatory Commission.

WPSC's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25119 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–85–NG]

Granite State Gas Transmission, Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Granite State Gas Transmission, Inc. authorization to import up to 6,036 MMBTU per day (6,000 Mcf) of natural gas from Canada beginning on the date of the authorization through October 31, 2006.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 5, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–25110 Filed 10–12–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4788–2]

Toxics Data Reporting Subcommittee of the Environmental Information and Assessments Committee, National Advisory Council for Environmental Policy and Technology; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, EPA gives notice of a 2 day meeting of the Toxics Data Reporting subcommittee of the National Advisory Council for Environmental Policy and Technology. This will be the fourth meeting of the Toxics Data Reporting subcommittee, whose mission is to provide advice to EPA regarding the Agency's Toxics Release Inventory (TRI) Program.

DATES: The public meeting will take place on October 28, 1993 from 8:30 a.m. to 5 p.m., and October 29, 1993 from 8:30 a.m. to 3 p.m. Members of the public wishing to make comments at this meeting should submit their comments, in writing, by October 21, 1993.

ADDRESSES: The public meeting will be held at the The Bellevue Hotel, Lexington Room, 15 E Street, Northwest, Washington, DC 20001 (202–638–0900). Written comments must be submitted to: US Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: Sam Sasnett, 7408.

FOR FURTHER INFORMATION CONTACT: Cassandra Vail, Environmental Assistance Division, US Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460 Telephone: 202–260–0675.

SUPPLEMENTARY INFORMATION: EPA is proposing that the subcommittee review the following issue areas: TRI data management, TRI program directions, and Form R elements and reporting policy (Form R is the EPA form used to report information required under section 313 of the Emergency Planning and Community Right-to-Know Act). the agenda for the two days will focus on discussion of Form R elements and reporting policy. Meeting participants will discuss guidance issues associated with the data elements added to Form R as required by the Pollution Prevention Act of 1990 (PPA), including definitions and guidance for reporting recycling on EPA Form R and the sufficiency of the data elements in meeting the mandate of the PPA.

Dated: October 6, 1993.

David J. Graham,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 93–25102 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4787–8]

Para-Chem Southern Inc. Site; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Para-Chem Southern Incorporated Site, Simpsonville, Greenville County, South Carolina with one party: Para-Chem Southern Incorporated. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (404) 347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: September 28, 1993.

Joseph R. Franzmathes,

Director, Waste Management Division.

[FR Doc. 93–25104 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4788–1]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act; Tonolli 2d De Minimis Settlement

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: the U.S. Environmental Protection Agency ("EPA") is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 33 *de minimis* parties for response costs incurred, and to be incurred, at the Tonolli Corporation Superfund Site, Nesquehoning, Pennsylvania. This is the second proposed *de minimis* settlement for this Site.

DATES: Comments must be provided on or before November 12, 1993.

ADDRESS: Comments must be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and should refer to: *In Re Tonolli Corporation Superfund Site,* Nesquehoning, Pennsylvania, U.S. EPA Docket No. III–93–03–DC.

FOR ADDITIONAL INFORMATION CONTACT: Lydia Isales, (215) 597–9951, U.·S. Environmental Protection Agency, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tonolli Corporation Superfund Site in Nesquehoning, Pennsylvania. The agreement was proposed by EPA Region III on December 11, 1992, subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee. Below are listed the parties who have executed certifications of their consent to participate in the settlement:

1. Al-Jan Company Inc.
2. A.W. Martin, Inc.
3. Allen Products Company, Inc.
4. Atlas Lederer.
5. Belmont Metals, Inc.
6. Bethlehem Motors.
7. Camerota Scrap Recycling.

8. Commercial Metals Company.
9. C&C Cullet Supply.
10. David Markowitz Metal Co.
11. Edward Arnold Scrap Company.
12. Eisner Brothers Company, Inc.
13. Federal Metals Company, Inc.
14. Fitzsimmons Metal Company, Inc.
15. G&G Salvage Corp.
16. Hahn & Sons.
17. HD Metal Co.
18. Joseph Gottlieb Company.
19. Lexington Scrap Metal Company.
20. Libby, McNeil, and Libby.
21. Leiby, David.
22. Luria Brothers.
23. Midlane Salvage Co., Inc.
24. Northeast Golf Cars, Inc.
25. Novey Iron and Steel.
26. Penn Builders Supply (Burrell Group).
27. Penn Iron and Metal Company.
28. R&R Salvage, Inc.
29. Samincorp, Inc.
30. Schioppo.
31. Stong, Joseph.
32. Timpson Salvage Company, Inc.
33. Weinstein Company.

These 33 parties collectively agreed to pay $542,124.04 subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlement with *de minimis* parties to allow them to resolve their liabilities under, *inter alia*, section 107 without incurring substantial transaction costs. Under this authority EPA proposes to settle with potentially responsible parties ("PRPs") at the Tonolli Corporation Superfund Site who are responsible for less than one percent of the volume of hazardous substances at the Site.

On July 24, 1992, EPA signed an Administrative Order on Consent which was intended to resolve the liabilities under CERCLA of 170 *de minimis* parties for response costs incurred or to be incurred at the Site.

On December 11, 1992, EPA extended an offer to enter into a second *de minimis* agreement to those *de minimis* PRPs who had not executed the first *de minimis* agreement. The 33 parties listed above signed that second agreement.

The terms of the proposed second *de minimis* agreements are similar to the first *de minimis* agreement, EPA's estimate of total response costs at the Site (past costs already incurred and future costs) was $34,366,701. This figure was calculated by EPA to reflect the reasonable maximum total cost estimate for the remedy at the Site, which EPA had not selected at the time of the first *de minimis* settlement agreement. The $34,366,701 figure was used to compute the allocable share of each of the *de minimis* parties who chose to become parties to the first *de minimis* settlement agreement.

Subsequent to the first *de minimis* agreement, EPA selected a long-term remedy for the Site in a Record of Decision that estimated that the long-term remedy would cost $16,616,000. This amount was lower than the long-term remedy cost estimate used in calculating the $34,366,701 reasonable maximum total cost estimate discussed above. Nevertheless, to assure that the settlors who executed the first *de minimis* settlement agreement are properly credited for their compliance with the deadline imposed for that settlement, the second *de minimis* agreement also uses the $34,366,701 reasonable maximum total cost estimate as the basis for computing the allocable share of each of the parties to the second *de minimis* settlement agreement. In addition, the second *de minimis* settlement agreement requires the 33 *de minimis* settlors to pay an additional 10% of their allocated share of $34,366,701 for missing the deadline to enter into the first *de minimis* settlement.

Questions regarding the use of the original $34,366,701 cost estimate for the second *de minimis* settlement agreement may be directed to the additional information contact listed below.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent may be obtained from the EPA's Region III, Office of Regional Counsel, 841 Chestnut Building, Philadelphia, PA 19107 by contacting Lydia Isales at (215) 597–9951.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–25103 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4788–3]

Notice of Proposed Assessment of Clean Water Act Class I Administrative Penalties Against Orchids & Roses, Inc. and Opportunity to Comment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I administrative penalties and opportunity to comment.

SUMMARY: U.S. EPA is providing notice of a proposed assessment of administrative civil penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), U.S. EPA is authorized to issue orders assessing administrative civil penalties for various violations of the Clean Water Act. EPA may issue an administrative penalty order after the commencement of either a Class I or Class II penalty proceeding. EPA must provide public notice of and reasonable opportunity to comment on the proposed issuance of the administrative penalty order pursuant to 33 U.S.C. 1319(g)(4)(a).

Class I proceedings are conducted under EPA's proposed Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties under the Clean Water Act, 40 CFR part 28, which have been published in the **Federal Register** at 56 FR 29996 (July 1, 1991). The procedures through which the public may submit written comment on a proposed Class I order or participate in a Class I proceeding, and the Procedures by which a Respondent may request a hearing, are set forth in the proposed Consolidated Rules. The deadline for submitting public comment on a proposed Class I order is thirty (30) days after publication of this notice.

On the date identified below, EPA commenced the following Class I proceeding for the assessment of penalties:

In the Matter of Orchids & Roses, Inc., located at 3499 East 15th Street, Los Angeles, California, EPA Docket No. CWA–IX–FY93–38, filed on September 29, 1993, with Mr. Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $25,000 for failure to comply with the categorical pretreatment standards and requirements for new source metal finishers (40 CFR part 433).

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the U.S. EPA's proposed Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding, should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the U.S. EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the

administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, U.S. EPA will not issue a final order assessing a penalty in these proceedings before thirty (30) days after the date of publication of this notice.

Dated: September 29, 1993.

William H. Pierce,

Acting Director, Water Management Division.

[FR Doc. 93–25105 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4788–4]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to Fred L. Clark Trucking Company and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C.1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Fred L. Clark Trucking Company (Wastewater Treatment Plant), Mammoth, AZ 85618, Docket No. CWA-IX-FY93–49; filed on September 30, 1993 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $125,000, for discharges of pollutants in violation of an NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: September 22, 1993.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 93–25106 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4788–9]

Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty to Biltmore Properties, Inc. and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Biltmore Properties, Inc. (Kachina Gardens Wastewater Treatment Plant), Winslow, AZ 86047, Docket No. CWA-IX-FY93–40; filed on September 28, 1993 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $125,000, for discharges of pollutants in violation of an NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: September 27, 1993.

Harry Seraydarian,

Director, Water Management Division.

[FR Doc. 93–25107 Filed 10–12–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed. The incident period for this disaster is June 28, 1993 through and including October 5, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–25074 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from flooding and severe storms on June 28, 1993, through and including August 26, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Kansas and the Federal Coordinating Officer of this amendment to my major disaster declaration.

Notice is hereby given that the incident period for this disaster is reopened and amended to be June 28, 1993, and continuing.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25075 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–997–DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois, (FEMA–997–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq*, in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Illinois, resulting from severe storms, Mississippi River flooding, and other riverine flooding, and other riverline flooding on April 13, 1993, through and including August 31, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Illinois and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25084 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–996–DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–996–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Iowa, resulting from severe storms and flooding on April 13, 1993, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety,

emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Iowa and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25082 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–993–DR]

Minnesota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–993–DR), dated June 11, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms, flooding, and tornadoes on May 6, 1993, through and including August 25, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Minnesota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25079 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–995–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–995–DR), dated July 9, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and flooding on June 10, 1993, and continuing is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Missouri and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25081 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1001–DR]

North Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Dakota, (FEMA–1001–DR), dated July 26, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe storms and flooding on June 22, 1993, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of North Dakota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25083 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–999–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–999–DR), dated July 19, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of South Dakota, resulting from severe storms, tornadoes and flooding beginning on May 6, 1993, and continuing, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of South Dakota and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25076 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: Federal Emergency Management Agency (FEMA) gives notice that the maximum amounts for Individual and Family Grants and grants to State and local governments and private nonprofit facilities are adjusted for disasters declared on or after October 1, 1993.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended, prescribes that grants made under section 411, Individual and Family Grant Program, and grants made under section 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under sec. 411 of the Act, with respect to any single disaster, is increased to $12,200 for all disasters declared on or after October 1, 1993.

Notice is also hereby given that the amount of any grant made to the State, local government, or to the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $42,400 for all disasters declared on or after October 1, 1993.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 2.8 percent for the prior 12-month period. The information was published by the Department of Labor during September 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25072 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–994–DR]

Wisconsin; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin, (FEMA–994–DR), date July 2, 1993, and related determinations.

EFFECTIVE DATE: September 27, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 27, 1993, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, tornadoes, and flooding on June 7, 1993, through and including August 25, 1993, is of sufficient severity and magnitude that special conditions are warranted regarding the cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

("the Stafford Act") for the Public Assistance program.

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance to 90 percent of total eligible costs, except for direct Federal assistance costs for emergency work authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all authorized Public Assistance costs, including debris removal to eliminate immediate threats to public health and safety, emergency work to save lives and protect public health and safety, and repair or reconstruction of uninsured public and private non-profit facilities.

This adjustment to State and local cost sharing applies only to Public Assistance costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to States for the Individual and Family Grant program. These funds will continue to be reimbursed at 75 percent of total eligible costs.

Please notify the Governor of the State of Wisconsin and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 93–25080 Filed 10–12–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; West Coast of South America Agreement

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 202–002744–072.

Title: West Coast of South America Agreement.

Parties:

Compania Sud Americana de Vapores, S.A.

Flota Mercante Grancolombia, S.A.

Lineas Navieras Bolivianas, S.A.M.

Lykes Bros. Steamship Co., Inc.

Compania Chilena de Navigacion Interoceania, S.A.

Nedlloyd Lijnen, B.V.

E.N.S. Container Line Ltd.

South Pacific Shipping Company, Ltd.

Synopsis: The proposed amendment modifies Article 14—Service Contracts to allow members to enter into service contracts with shippers for a pro-rated portion of the TEU minimum based on the length of the contract for calendar year 1994. The parties have requested a shortened review period.

Agreement No.: 224–200800.

Title: Tampa Port Authority/Apollo Stevedoring Company Domestic Inbound Incentive Iron or Steel Articles Wharfage Agreement.

Parties:

Tampa Port Authority ("Port")

Apollo Stevedoring Company

Filing Agent: Harold E. Welch,

Registered Practitioner,

Tampa Port Authority,

P.O. Box 2191,

Tampa, Florida 33601.

Synopsis: The Agreement provides for the Port of assess an incentivie wharfage rate of $1.00 per net ton on domestic inbound iron or steel articles subject to a minimum annual volume of 1,000 net tons.

Agreement No.: 224–200801.

Title: Port of San Francisco/ Stevedoring Services of America Nonexclusive Management Agreement.

Parties:

Port of San Francisco ("Port")

Stevedoring Services of America ("SSA")

Synopsis: The proposed Agreement permits SSA nonexclusive rightst to operate at Piers 94 and 96. It also provides for the Port to compensate SSA for providing services at the facility during the five year term of the Agreement.

Dated: October 6, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–24988 Filed 10–12–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of August 17, 1993

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on August 17, 1993.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is expanding at a moderate pace. Total nonfarm payroll employment increased in July at a rate close to its average advance in earlier months of the year, and the civilian unemployment rate declined to 6.8 percent. Industrial production turned up in July after posting small declines in May and June. Retail sales edged higher in July following a sizable rise in the second quarter. Housing starts were down somewhat in July, but permits moved up. Available indicators point to continued expansion in business capital spending. The nominal U.S. merchandise trade deficit declined in May, but for April and May combined it was larger than its average rate in the first quarter. After rising at a faster rate in the early part of the year, consumer prices have changed little and producer prices have fallen in recent months.

Short- and intermediate-term interest rates have changed little since the Committee meeting on July 6-7, while yields on long-term Treasury and corporate bonds have declined somewhat. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies was about unchanged on balance over the intermeeting period.

After expanding appreciably over the second quarter, M2 increased slightly further in July and M3 declined. For the year through July, M2 is estimated to have grown at a rate close to the lower end of the Committee's range for the year, and M3 at a rate slightly below its range. Total domestic nonfinancial debt has expanded at a moderate rate in recent months, and for the year through June it is estimated to have increased at a rate in the lower half of the Committee's monitoring range.

The Federal Open Market Committee seeks monetary and financial conditions that with foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in July lowered the ranges it had established in February for growth of M2 and M3 to ranges of 1 to 5 percent and 0 to 4 percent respectively, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The Committee anticipated that

[1] Copies of the Minutes of the Federal Open Market Committee Meeting of August 17, 1993, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

developments contributing to unusual velocity increases would persist over the balance of the year and that money growth within these lower ranges would be consistent with its broad policy objectives. The monitoring range for growth of total domestic nonfinancial debt also was lowered to 4 to 8 percent for the year. For 1994, the Committee agreed on tentative ranges for monetary growth, measured from the fourth quarter of 1993 to the fourth quarter of 1994, of 1 to 5 percent for M2 and 0 to 4 percent for M3. The Committee provisionally set the monitoring range for growth of total domestic nonfinancial debt at 4 to 8 percent for 1994. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movement in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with modest growth in M2 and little net change in M3 over the balance of the third quarter.

By order of the Federal Open Market Committee, October 6, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93-25057 Filed 10-12-93; 8:45 am]

BILLING CODE 6210-01-F

Jones Bancshares, L.P.; 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 225.24) 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 October 21, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Jones Bancshares, L.P.*, Waycross, Georgia; to become a bank holding company by acquiring 70.9 percent of the voting shares of Blackshear Bancshares, Inc., Blackshear, Georgia, and thereby indirectly acquire Blackshear Bank, Blackshear, Georgia.

Board of Governors of the Federal Reserve System, October 7, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-25196 Filed 10-8-93; 11:15 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Friday, October 22, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G Street, NW., Washington, DC.

The agenda for the meeting includes discussions of (1) Liabilities and Future Claims and (2) Cost Accounting.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First Street NE., room 1001, Washington, DC 20002, or call (202) 512-7354.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: October 6, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93-25039 Filed 10-12-93; 8:45 am]

BILLING CODE 1610-01-P

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 10]

Federal Travel Regulation; Reimbursement of Higher Actual Subsistence Expenses for Travel to Topeka, Kansas

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of bulletin.

SUMMARY: The attached bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Topeka (Shawnee County), Kansas. The Director of the Federal Emergency Management Agency (FEMA) requested establishment of an increased rate to accommodate the FEMA employees who are assisting victims of the Midwest flooding and who are performing temporary duty in Topeka. The FEMA employees are experiencing a temporary but significant increase in lodging costs due to escalation of lodging rates as a result of the National Stock Car Races being held there.

EFFECTIVE DATES: This special rate applies to claims for reimbursement covering travel to Topeka, Kansas during the period September 27 through October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Director of the Federal Emergency Management Agency, has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Topeka (Shawnee County), Kansas for travel during the period September 27 through October 4, 1993. The attached GSA Bulletin FTR 10 is issued to inform agencies of the establishment of this special actual subsistence expense ceiling.

Dated: October 5, 1993.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

Attachment

ATTACHMENT

[GSA Bulletin FTR 10]

October 5, 1993

To: Heads of Federal agencies

Subject: Reimbursement of higher actual subsistence expenses for travel to Topeka (Shawnee County), Kansas.

1. *Purpose.* This bulletin informs agencies of the establishment of a special actual subsistence expense ceiling for official travel to Topeka (Shawnee County), Kansas, where lodging rates have escalated as a result of the National Stock Car Races being held there. This special rate applies to claims for reimbursement covering travel during the period September 27, 1993, through October 4, 1993.

2. *Background.* The Federal Travel Regulation (FTR) (41 CFR 301–8) permits the Administrator of General Services to establish a higher maximum daily rate for the reimbursement of actual subsistence expenses of Federal employees on official travel to an area within the continental United States. The Director of the Federal Emergency Management Agency (FEMA) requested establishment of an increased rate to accommodate the FEMA employees who are assisting victims of the Midwest flooding and performing temporary duty in Topeka and who are experiencing a temporary but significant increase in lodging costs. These circumstances justify the need for higher subsistence expense reimbursement in Topeka during the designated period.

3. *Maximum rate and effective dates.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c), has increased the maximum daily amount of reimbursement that may be approved for actual and necessary subsistence expenses for official travel to Topeka (Shawnee County), Kansas, for travel during the period September 27, 1993, through October 4, 1993. Agencies may approve actual subsistence expense reimbursement not to exceed $126 ($100 maximum for lodging and a $26 allowance for meals and incidental expenses) for travel to Topeka (Shawnee County), Kansas, during this time period.

4. *Expiration date.* This bulletin expires on December 31, 1993.

5. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 93–25011 Filed 10–12–93; 8:45 am]

BILLING CODE 6820–24F

GOVERNMENT PRINTING OFFICE

Public Meeting for Information Companies on Implementation of the GPO Electronic Information Access Enhancement Act of 1993, (Public Law 103–40)

The Superintendent of Documents will hold a public meeting for information companies interested in the implementation of the Government Printing Office Electronic Information Access Enhancement Act of 1993 (Pub. L. 103–40). The meeting will be held on Friday, October 22, 1993, from 10 a.m. until noon, in the Carl Hayden Room at the U.S. Government Printing Office (GPO), 732 North Capitol Street NW., Washington, DC 20401.

Under this Act, the Superintendent of Documents is required to: (1) Maintain an electronic directory of Federal electronic information; (2) provide a system of online access to the Congressional Record, the **Federal Register**, and other appropriate information. The purpose of the meeting is to describe GPO's plan for implementation of the Act and to consult with providers of similar information services in order to assess the quality and value of the anticipated services.

Individuals interested in attending should contact the GPO Office of Congressional, Legislative and Public Affairs in advance. The office can be reached by telephone at 202–512–1991 or by FAX on 202–512–1293. Limited parking is available if arrangements are made in advance.

Michael F. DiMario,

Acting Public Printer.

[FR Doc. 93–25258 Filed 10–8–93; 2:53 pm]

BILLING CODE 1505–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Affairs; Statement of Organization and Functions

This Notice amends Part A of the Statement of Organization and Functions of the Department of Health and Human Services, Office of the Secretary, Office of Public Affairs, as follows: Chapter AP, as last amended at 54 FR 26110 on June 21, 1989. Specifically, this organizational change will make the following changes to the Office of the Assistant Secretary for Public Affairs: Retitle the name of the Deputy Assistant Secretary for Public Affairs (Policy and Communications) to Deputy Assistant Secretary for Public Affairs (Policy and Strategy); establish the Special Initiatives Coordinator and the Special Outreach Division to report to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy); and transfer the FOIA/Privacy Act Division to the Office of the Deputy Assistant Secretary for Public Affairs (Media). Delete Chapter AP in its entirety and replace with the following:

AP.00 Mission. The mission of the Office of the Assistant Secretary for Public Affairs (OASPA) is to serve as the Secretary's principal public affairs policy advisor; to provide centralized professional leadership and continuous monitoring and evaluation of Departmentwide policies, procedures and operating practices regarding public affairs activities; and to administer the Freedom of Information Act, Privacy Act and other information access statutes.

AP.10 Organization. The Office of the Assistant Secretary for Public Affairs, headed by the Assistant Secretary for Public Affairs (ASPA) who reports to the Secretary, consists of the following organizations:

The Office of the Assistant Secretary for Public Affairs
The Office of the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
Communications Services Division
Special Outreach Division
The Office of the Deputy Assistant Secretary for Public Affairs (Media)
News Division
Speech and Editorial Division
FOIA/Privacy Act Division

Section AP.20 Functions.

A. *The Office of the Assistant Secretary for Public Affairs*—Provides executive leadership, policy direction, and management strategy for the Department's public affairs programs and activities. Counsels and acts for the Secretary and the Department in carrying out responsibilities under statutes. Presidential directives, and Secretarial orders for informing the general public, specialized audiences, HHS employees, and other Federal employees about the programs, policies, and services of the Department.

Establishes and enforce policies and practices which produce an accurate, clear, efficient, and consistent flow of information to the general public and other audiences about departmental programs and activities.

Provides advice, counsel and information to the Secretary and other HHS policymakers to assure that public affairs impact is considered in the establishment of departmental policies or the conduct of its activities.

Serves as the principal point of contact with senior White House officials regarding communications and press issues.

Exercises professional leadership and provides functional management of public affairs activities throughout the Department to assure that Secretarial priorities are followed, high quality standards are met, and cost-effective, non-duplicative communications products are developed which accurately and effectively inform its audiences.

Serves as Secretarial surrogate throughout the public and private sector to both represent the views of the Administration and the Secretary, and to inform and educate various audiences.

Ensures coordination among public affairs components. Manages public affairs issues and special activities that cut across Operating Division lines.

B. *Deputy Assistant Secretary for Public Affairs (Policy and Strategy)*—Is responsible for developing effective strategies to publicize Departmental policies, goals and accomplishments, activities related to the Department's communications services and public affairs policy analysis, and management oversight of the Communications Services Division and the Special Outreach Division.

Provides advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs; coordinates with the Deputy Assistant Secretary for Public Affairs (Media) in providing prompt response to media and public inquiries, and in helping the Assistant Secretary for Public Affairs generate a strategic focus for stories and other information products that the Department develops and wishes to highlight.

Manages or coordinates the conduct of high priority media companies and information programs in the Department. Acts as liaison to private sector organizations, to the Operating and Staff Divisions, to the public affairs units in the HHS Operating Divisions and Regions and to other Federal agencies, including OMB and the Office of Public Liaison at the White House.

Initiates, designs and effects outreach program for all organizations, associations and individuals concerned with the broad range of policies, programs and issues of the Department.

Serves as confidential advisor to senior staff within OASPA. Performs special assignments which involve and cut across Department programs and activities to achieve broadly defined public affairs management and program objectives. Interacts with internal and external organizations, groups, and individuals to secure and provide information concerning matters affecting HHS policy, interests, and initiatives. Represents the Assistant Secretary for Public Affairs in conveying official viewpoints and policy considerations of the Department and the Administration.

B.1 *Communications Services Division*—Provides direction to all audiovisual activities in and for the Department.

Responsible for all aspects of print and audiovisual production and programming in support of the Secretary, the ASPA and senior HHS management. Operates the HHS studio and coordinates activities of other HHS studios as required. Under the direction of the ASPA, develops and implements media campaigns and special projects. Acts as liaison to broadcast organizations.

Establishes departmental policy and procedures for the procurement, design, production, distribution and quality control of media campaigns, audiovisual products, exhibits and publications.

Reviews and clears all media campaigns, audiovisual products and exhibits produced with departmental funds. Reviews audiovisual aspects of HHS public affairs' components plans to ensure that they support HHS policy.

Reviews and clears all periodicals and publications materials produced with departmental funds. Provides liaison with OMB on matters pertaining to publications and periodicals.

Reviews and approves contracts for public affairs services. Collects and analyzes information on projected departmental public affairs offices' budgets, staffing and communication initiatives.

Monitors clearinghouse and information center activities. Reviews and approves departmental information center requests for contracts and information center operating contracts. Collects operating data from departmental information centers and reports on accomplishments in information dissemination and effectiveness of personnel use and government expenditures.

Responds to inquiries from Congress and other arms of the government that involve the collection of data about HHS public affairs activities.

Responds to requests for speakers and coordinates the scheduling of speaking engagements of various policy-level officials on the Department.

Manages the Hispanic Communications function which provides Spanish language news services and Hispanic Media liaison, Spanish language print and audiovisual clearances, advises HHS components on Hispanic communications strategies and serves as a contact for public liaison with Hispanic groups and individuals.

Coordinates all activities of private sector initiatives of the White House.

B.2 *Special Outreach Division*—The Special Outreach Division, in concert with the Special Initiatives Coordinator and the Communications Services Division establishes liaison with the public information officers in the Operating Divisions (OPDIVs). Through information sharing and collaborative efforts with the OPDIVs, advances the objectives of the Office of the Assistant Secretary for Public Affairs to highlight the programs and initiatives of the OPDIVS and obtain wider coverage of the activities of the Secretary and other senior Administration officials.

C. *The Office of the Deputy Assistant Secretary for Public Affairs (Media)*—Is responsible for policies and activities related to the Department's speech and editorial services and for providing the public with information about the Department's policies and programs through the news media.

Provide advice and assistance on all public affairs matters, in consultation with the Assistant Secretary for Public Affairs and in coordination with the Deputy Assistant Secretary for Public Affairs (Policy and Strategy), provides prompt responses to media and public inquiries; and generates a strategic focus for stories and other information products or outputs that the Department develops and wishes to highlight.

Is responsible for management oversight of the Speech and Editorial Division and the FOIA/Privacy Act Division.

Conducts an active communication program with the public on behalf of the Department through the media and other avenues of communication in order to further public understanding of its policies, programs and issues.

Coordinates press activities with the White House Press Office and other governmental press operations.

Oversees the departmental message center, preparing Presidential and

secretarial messages for deserving individuals and organizations.

Serves as a writing resource for the Secretary, a source of news clippings from major newspapers, a filing source for Secretarial materials and a resource for public affairs preparation and planning.

Responds to inquiries from Congress, other arms of the government, media and the public that involves the collection of data.

C.1 *News Division*—Plans, directs and coordinates the issuance of public information from HHS to the press and broadcast media.

Prepares news releases and other news material for the Secretary and other top Department officials. Reviews and clears all news releases and other news materials prepared by HHS components.

Identifies news opportunities for the Secretary.

Makes recommendations concerning press releases on upcoming publication of regulations or other actions.

Identifies likely media questions for news conferences and interviews, assists in preparing background briefing for encounters with the press.

Briefs the Secretary, Deputy Secretary, and Chief of Staff, in conjunction with other departmental experts for all media events.

Responds to press queries, either directly or by steering reporters to appropriate public affairs personnel in Operating Division press offices.

Coordinates press conferences for the Secretary. Acts as a liaison for reporters requesting interviews and for newspaper editorial boards wishing to meet with the Secretary.

Directs the preparation of the Green Sheet, a daily compilation of news concerning HHS programs and activities.

Monitors AP and UPI wires and distributes articles of interest throughout the day to key staff.

C.2 *Speech and Editorial Division*—Serves as the principal resource within the Department for reviewing and editing written materials reflecting the views of the Secretary, Deputy Secretary and Chief of Staff.

Prepares speeches, statements, articles, and related material for the Secretary, Deputy Secretary and Chief of Staff and other Departmental officials.

Researches and prepares OP Ed pieces, features, articles, and stories for the media.

Reviews all regulations and other policy memoranda, and advises the Deputy Assistant Secretary for Public Affairs (Media) of appropriate response.

C.3 *FOIA/Privacy Act Division*—Administers information access and privacy protection laws and HHS regulations implementing these laws to ensure Departmentwide consistency in information disclosure, confidentiality policies, practices and procedures. Such laws include the Freedom of Information Act and the Privacy Act, as well as the open meetings provisions of the Federal Advisory Committee Act, the Government in the Sunshine Act and the disclosure provisions of the Ethics in Government Act.

In concert with Office of General Counsel staff, assists in development of regulations implementing these statutes and develops policy interpretations and guidelines as well as procedural materials and training programs for all Department components.

Develops policy guidelines and training programs for all HHS components regarding FOIA and related legislation, i.e., the Privacy Act, Federal Advisory Committee Act and the Government in the Sunshine Act.

Provides responses to requests made under the Freedom of Information Act and determines the availability of records and information under the law and HHS Regulations.

Resolves questions which overlap the FOIA and the Privacy Act regarding release of records.

Provides policy guidance on and maintains the index of materials required by FOIA.

Analyzes and recommends action on FOIA and Privacy Act appeals for documents denied by officials in the Office of the Secretary.

Dated: October 11, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–24987 Filed 10–2–93; 8:45 am]

BILLING CODE 4110–60–M

Food and Drug Administration

[Docket No. 90F–0175]

Food Techniques, Inc.; 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 0A4207) proposing that the food additive regulations be amended to provide for the safe use of ozone as an antimicrobial agent in poultry meat during processing.

FOR FURTHER INFORMATION CONTACT: Gerald J. Buonopane, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 25, 1990 (55 FR 25887), FDA announced that a food additive petition (FAP 0A4207) had been filed by Food Techniques, Inc., 267 Hayes Mill Rd., Atco, NJ 08004. The petition proposed that the food additive regulations be amended to provide for the safe use of ozone as an antimicrobial agent in poultry meat during processing. Food Techniques, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: October 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–25073 Filed 10–12–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of Corrected Table of Contents, Privacy Act Issuances, 1991 Compilation.

SUMMARY: HCFA is taking this opportunity to publish a corrected table of contents located in the Privacy Act Issuances, 1991 Compilation, Volume I, Page 388. In addition to deleting 12 systems of records, we are making a variety of editorial corrections for specificity.

DATES: This notice will take effect upon publication (October 13, 1993).

ADDRESSES: The public should address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, HCFA, Room 2–H–4, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

SUPPLEMENTARY INFORMATION: The Office of the Federal Register publishes a compilation of system of records notices for all agencies every 2 years. It is a valuable source of the types of information that Federal agencies have on individuals. Because the compilation is only published every 2 years, the last one in 1991, it is important that the information contained in it is accurate and up to date. Because the 1993 compilation is due out early next year, HCFA is taking this opportunity to

correct errors in the index of its systems of records. In addition, to providing a complete listing of HCFA systems of records, we are taking this opportunity to list all system notices published through August 1993.

Note: A list of acronyms can be found at the end of this document for the convenience of the reader.

Systems of Records Deleted

09–70–0008 Supplementary Medical Sample Bill Summary File of Medicare Utilization (Statistics), HHS/HCFA/BDMS.

09–70–0013 Annual 5 Percent Summary File of Services Reimbursed Under the Medicare Program (Statistics), HHS/HCFA/BDMS.

09–70–0026 Study of The Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap, HHS/HCFA/ORD.

09–70–0028 Study of the Social, Ethical and Economic Consequences of Medicare Coverage for Heart Transplants, HHS/HCFA/ORD.

09–70–0031 Evaluation of the HCFA Alcoholism Services Demonstration, HHS/HCFA/ORD.

09–70–0032 Physicians' Practice Costs and Incomes Survey, HHS/HCFA/ORD.

09–70–0037 1988 Physicians' Practice Costs and Incomes Survey, HHS/HCFA/ORD.

09–70–0043 Evaluation of the OBRA 87 Medicare Payment for Therapeutic Shoes for Individuals With Severe Diabetic Foot Disease Demonstration, HHS/HCFA/ORD.

09–70–0528 Drug Bill Processor Records on Medicare Prescription Drug Beneficiaries, HHS/HCFA/BPO.

09–70–1509 Complaint Files on Nursing Homes, HHS/HCFA/HSQB.

09–70–2002 HCFA Program Integrity/Program Validation Case Files, HHS/HCFA/BQC.

09–70–2005 Medicaid Third Party Liability (TPL) Cost Avoidance Study, HHS/HCFA/BQC.

Corrected Table of Contents

System Number and System Name

09–70–0005 National Claims History, HHS/HCFA/BDMS.

09–70–0006 Medicare Enrollment Records (Statistics), HHS/HCFA/BDMS.

09–70–0007 Health Insurance Enrollment Statistics-General Enrollment Period, HHS/HCFA/BDMS.

09–70–0019 Actuarial Sample Hospital Stay Record Study, HHS/HCFA/OACT.

09–70–0020 Actuarial Sample Hospital Stay Record Study, HHS/HCFA/OACT.

09–70–0022 Municipal Health Services program, HHS/HCFA/ORD.

09–70–0029 Evaluation of Medicare Competition Demonstrations, HHS/HCFA/ORD.

09–70–0030 National Long-Term Care Study Followup, HHS/HCFA/ORD.

09–70–0033 Person-Level Medicaid Data System, HHS/HCFA/ORD.

09–70–0034 Evaluation of Social/Health Maintenance Organization (S/HMO) Demonstrations, HHS/HCFA/ORD.

09–70–0035 Aftercare Evaluation System (AES), HHS/HCFA/ORD.

09–70–0036 Evaluation of Competitive Bidding for Durable Medical Equipment Demonstration, HHS/HCFA/ORD.

09–70–0038 Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program, HHS/HCFA/ORD.

09–70–0039 Evaluation of the Medicare Alzheimer's Disease Demonstration, HHS/HCFA/ORD.

09–70–0040 Health Care Financing Administration (HCFA) Organ Transplant Data File, HHS/HCFA/BDMS.

09–70–0041 Evaluation of the OBRA 87 Medicare Payment of Influenza Vaccination Demonstration, HHS/HCFA/ORD.

09–70–0042 Medicare Cancer Registry Record System, HHS/HCFA/BDMS.

09–70–0044 Demonstration and Evaluation of the Medicare Insured Group (MIG) Model, HHS/HCFA/ORD.

09–70–0045 Evaluation of the Arizona Health Care Cost containment and Long-Term Care Systems Demonstration, HHS/HCFA/ORD.

09–70–0046 Home Health Quality Indicator System (HHQUIS), HHS/HCFA/ORD.

09–70–0047 HCFA Medicare Predictor Data File, HHS/HCFA/ORD.

09–70–0048 Monitoring of the Home Health Agency Prospective Payment Demonstration, HHS/HCFA/ORD.

09–70–0049 Evaluation of the Home Health Agency Prospective Payment Demonstration, HHS/HCFA/ORD.

09–70–0051 Quality Assurance for the Home Health Agency (HHA) Prospective Payment Demonstration, HHS/HCFA/ORD.

09–70–0501 Carrier Medicare Claims Records, HHS/HCFA/BPO.

09–70–0502 Health Insurance Master Record, HHS/HCFA/BPO.

09–70–0503 Intermediary Medicare Claims Records, HHS/HCFA/BPO.

09–70–0504 Beneficiary Parts A and B Uncollectible Overpayment File, HHS/HCFA/BPO.

09–70–0505 Supplemental Medical Insurance Accounting Collection and Enrollment System, HHS/HCFA/BPO.

09–70–0507 Health Insurance Utilization Microfilm, HHS/HCFA/BPO.

09–70–0508 Reconsideration and Hearing Case Files (Part A) Hospital Insurance Program, HHS/HCFA/BPO.

09–70–0509 Medicare Beneficiary Correspondence Files, HHS/HCFA/BPO.

09–70–0512 Review and Fair Hearing Case Files—Supplementary Medical Insurance Program, HHS/HCFA/BPO.

09–70–0513 Explanation of Medicare Benefit Records, HHS/HCFA/BPO.

09–70–0516 Medicare Physician/Supplier Master File, HHS/HCFA/BPO.

09–70–0517 Physician/Supplier 1099 File (Statement for Recipients of Medical and Health Care Payments), HHS/HCFA/BPO.

09–70–0518 Medicare Clinic Physician/Supplier Master File, HHS/HCFA/BPO.

09–70–0520 End Stage Renal Disease (ESRD) Program Management and Medical Information System (PMMIS), HHS/HCFA/BDMS.

09–70–0522 Billing and Collection Master Record System, HHS/HCFA/BPO.

09–70–0524 Intern and Resident Information System, HHS/HCFA/BPO.

09–70–0525 Medicare Physician Identification and Eligibility System (MPIES), HHS/HCFA/BPO.

09–70–0526 Common Working File (CWF), HHS/HCFA/BPO.

09–70–0527 HCFA Utilization Review Investigatory Files, HHS/HCFA/BPO.

09–70–0529 Pennsylvania Medicaid/Medicare Duplicate Paid Claims, HHS/HCFA/ROIII.

09–70–1511 Physical Therapists in Independent Practice (Individuals), HHS/HCFA/HSQB.

09–70–1512 PRO Data Management System (PDMS), HHS/HCFA/HSQB.

09–70–1514 HCFA Severity of Illness Data File, HHS/HCFA/HSQB.

09–70–2003 Completion of State Medicaid Quality Control (MQC) Reviews, HHS/HCFA/MB.

09–70–2006 Income and Eligibility Verification for Medicaid Eligibility Quality Control (MEQC) Reviews, HHS/HCFA/MB.

09–70–3001 Record of Individuals Authorized Entry to HCFA Buildings Via a Card Key Access System, HHS/HCFA/OBA.

09–70–3002 Health Care Financing Administration (HCFA) Employee Building Pass Files, HHS/HCFA/OBA.

09–70–3003 Health Care Financing Administration (HCFA) Correspondence Handling and Processing System, HHS/HCFA/OBA.

09–70–4001 Group Health Plan System, HHS/HCFA/OPHCOO.

09–70–4002 Beneficiary Inquiry Tracking System (BITS), HHS/HCFA/OPHIC.

09–70–4003 Medicare HMO/CMP Beneficiary Reconsideration System (MBRS), HHS/HCFA/OPHCOO.

09–70–5001 Medicare Hearing and Appeals System (MHAS), HHS/HCFA/AAO.

09–70–6001 Medicaid Statistical Information System (MSIS), HHS/HCFA/BDMS.

09–70–6002 A Current Beneficiary Survey (CBS), HHS/HCFA/OACT.

09–70–9001 Health Care Financing Administration (HCFA) Correspondence and Assignment Tracking and Control System (CATCS), HHS/HCFA/OEO.

Systems of Records Published Through August 1993

09–70–0050 The Medicare/Medicaid Multistate Case-Mix and Quality Data Base for Nursing Home Residents, HHS/HCFA/ORD.

09–70–0052 Posthospitalization Outcomes Studies, HHS/HCFA/ORD.

09–70–0053 The Medicare Beneficiary Health Status Registry Pilot, HHS/HCFA/ORD.
09–70–0054 Evaluation of the United Mine Workers of America Health and Retirement Funds Medicare Part B Capitation Demonstration, HHS/HCFA/ORD.
09–70–0055 Implementation and Evaluation of the Staff-Assisted Home Dialysis Demonstration, HHS/HCFA/ORD.
09–70–0056 Evaluation of the Medicaid Expansion Demonstrations, HHS/HCFA/ORD.
09–70–0057 Evaluation of the Medicaid Extension of Eligibility to Certain Low Income Families Not Otherwise Qualified to Receive Medicaid Benefits Demonstration, HHS/HCFA/ORD.
09–70–0058 Evaluation of the Medicare SELECT Program, HHS/HCFA/ORD.
09–70–0059 The Medicaid Necessity, Appropriateness, and Outcomes of Care Study, HHS/HCFA/ORD.
09–70–0061 Evaluation of the Medicare Case Management Demonstration, HHS/HCFA/ORD.
09–70–0063 Evaluation of the Medicaid Demonstration for Improving Access to Care for Substance Abusing Pregnant Women, HHS/HCFA/ORD.
09–70–0530 Medicare Supplier Identification File, HHS/HCFA/BPO.

Note: This system was inadvertently numbered 09–70–0529 when originally published at 57 FR 23420, June 3, 1992.

Acronyms

AAO: Associate Administrator for Operations
BDMS: Bureau of Data Management and Strategy
BPO: Bureau of Program Operations
HSQB: Health Standards and Quality Bureau
MB: Medicaid Bureau
OACT: Office of the Actuary
OBA: Office of Budget and Administration
OEO: Office of Executive Operations
OCCPP: Office of Coordinated Care Policy and Planning
OPHCOO: Office of Prepaid Health Care Operations and Oversight
ORD: Office of Research and Demonstrations
ROIII: Pennsylvania Regional Office.

Dated: October 1, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–25032 Filed 10–12–93; 8:45 am]

BILLING CODE 4120–03–M

Social Security Administration

Social Security Ruling SSR 93–2p., Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Principal Deputy Commissioner of Social Security gives notice of Social Security Ruling 93–2p. This Policy Interpretation Ruling clarifies how the duration requirement in the Social Security Act and the Agency's regulations should be applied in determining whether a person claiming benefits based on human immunodeficiency virus (HIV) infection is disabled under Title II (Federal Old-Age, Survivors, and Disability Insurance Benefits) or Title XVI (Supplemental Security Income for the Aged, Blind, and Disabled) of the Social Security Act. This Ruling will ensure that a consistent procedure is followed when claims for disability benefits based on HIV infection are evaluated.

EFFECTIVE DATE: October 13, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners; 93.807 Supplemental Security Income)

Dated: September 29, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Policy Interpretation Ruling

Titles II and XVI: Evaluation of Human Immunodeficiency Virus Infection

Purpose: The purpose of this Policy Interpretation Ruling is to clarify the application of the duration requirement in the Social Security Act (the Act) and our regulations when evaluating claims for disability benefits based on human immunodeficiency virus (HIV) infection, including acquired immunodeficiency syndrome (AIDS), under titles II and XVI of the Act.

Citations: Sections 216(i), 223(d) and 1614(a) of the Social Security Act, as amended; Regulations No. 4, Subpart P, sections 404.1509, 404.1525(a), and Appendix 1, Parts A and B; Regulations No. 16, Subpart I, sections 416.909 and 416.925(a).

Introduction: The criteria for evaluating HIV infection claims are in the Listing of Impairments in Appendix 1 of Subpart P of Part 404 of Title 20 of the Code of Federal Regulations. We are issuing this Policy Interpretation Ruling to ensure consistent and correct application of our duration requirement when evaluating HIV claims.

Policy Interpretation: This Policy Interpretation Ruling clarifies the duration requirement in the Act and our regulations regarding how it should be applied in determining whether a person claiming benefits based on HIV infection is disabled under title II or title XVI of the Act.

Duration of Impairment—HIV Infection

With documentation of HIV infection as described in 14.00D3 or 114.00D3 of the preface to the Immune System listings, an individual who has an impairment that meets or equals one of the listed criteria required in listing 14.08 or 114.08 (the HIV listings) has an impairment that is considered permanent or expected to result in death. Accordingly, if an individual has an HIV infection of this severity, a separate finding on the duration of the impairment is not required, and the evidence required under sections 404.1525(a) and 416.925(a) of the regulations showing that the impairment has lasted or is expected to last for a continuous period of at least 12 months is not necessary.

Effective Date: This Ruling is effective on October 13, 1993.

Cross-Reference: Program Operations Manual System, Part 04, section DI 24595.

[FR Doc. 93–25059 Filed 10–12–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3672; FR–3592–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Announcement of establishment of Task Force; notice of open meeting.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge.

DATES: The first meeting will be held on November 8, 1993, at 9 a.m. (EST), at the Holiday Inn Capitol, 550 "C" Street, SW. (corner of 6th & C Streets), Washington, DC 20024.

ADDRESSES: Members of the public are invited to provide written material. Submit 50 copies of written statements to: Ruth C. Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ruth C. Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410; telephone (202) 755–1822. The TTD numbers are (202) 708–9300 or 1–800–877–8339. (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The first meeting of the Task Force will be held on November 8, 1993, beginning at 9 a.m. (EST), at the Holiday Inn Capitol, 550 "C" Street, SW. (corner of 6th & C Streets), Washington, DC 20024. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection Agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: October 4, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25126 Filed 10–12–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–5101–10–B040, LA–0152777A]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) on a proposed heated crude oil pipeline.

SUMMARY: Notice is hereby given the Bureau of Land Management (BLM), pursuant to Section 102(2)(C) of the National Environmental Protection Act of 1969, will be directing the preparation of an EIS by a third party contractor. This EIS is to assess the impacts of a proposed flow reversal of a portion of an existing crude oil pipeline and also changing it to a heated crude oil pipeline. This proposed project will involve both Federal and private lands in San Bernardino, Riverside and Los Angeles Counties, in southern California.

DATES: Written comments must be submitted by November 12, 1993. No public scoping meetings will be held. However, briefing meetings will be considered as appropriate.

ADDRESSES: Written comments should be sent to: District Manager, ATTN: FCPL Line 90 Project, Bureau of Land Management, California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714.

FOR FURTHER INFORMATION CONTACT: Stephen L. Johnson, Special Projects Manager, California Desert District, (909) 697–5230.

SUPPLEMENTARY INFORMATION: Four Corners Pipe Line Company (FCPL) owns and operates Line 90, an interstate 16-inch pipeline that presently transports Alaskan North Slope (ANS) crude oil from West Hynes Pump Station in Long Beach to All American Pipeline (AAPL) at Cadiz, California and ultimately to FCPL's Line 92 in Bisti, New Mexico. Line 90 is approximately 596 miles long and crosses portions of four States; California, Arizona, Utah and New Mexico.

FCPL proposes to undertake a project to allow the transportation of a daily average of 70,000 barrels per day of heated Outer Continental Shelf (OCS) crude oil on Line 90 from AAPL's Cadiz Pump Station, located about 60 miles west of the Colorado River, to West Hynes Pump Station located in Long Beach. This project shall reverse the direction of flow through the 188 mile long western leg of Line 90. From West Hynes the heated OCS crude oil will be distributed in the Los Angeles basis using existing pipeline systems.

The Line 90 Reversal Project includes the installation of two new pump stations (Twentynine Palms and Cabazon), the installation of one new drainback station (Sheephole), modifications to the connection at the AAPL's Cadiz Pump Station, the modification of pumping facilities (Morongo, Beaumont and Corona Pump Stations), distribution facilities additions, modifications at West Hynes Pump Station, modifications to the Line 90 to handle thermal expansion, installation of additional pipeline cathodic protection systems and pipeline hydrostatic testing. The California Desert Conservation Area (CDCA) Plan 1980 identified this

pipeline across Federal land. However Line 90 is outside the designated utility corridors identified in the CDCA Plan and, furthermore, no guidelines were developed to address amending existing rights-of-way outside of designated corridors where substantial changes are involved.

The tentative project schedule is as follows:

Begin public comment period—October 1993
File Draft EIS—January 1994
Conduct public hearings on Draft EIS—March 1994
File Final EIS—May 1994
Begin public comment period on Final EIS—May 1994
Record of Decision—July 1994

The determination that an EIS is needed was based on an analysis of potential impacts as described in a draft Environmental Assessment (EA) dated July, 1993 and BLM concluded that the proposed Line 90 Pipeline Reversal Project will have a significant impact on the human environment as defined in 40 CFR 1508.27. As a result, the scoping process will consist of this Notice of Intent; a news release announcing the start of the EIS process; and, a scoping document which further clarifies the proposed action, alternatives and significant issues being considered will be available upon request.

Dated: October 4, 1993.

Richard E. Fagan,

California Desert District Manager.

[FR Doc. 93–25012 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–40–M

[NM–920–02–4120–02]

San Juan River Regional Coal Team (RCT) Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of RCT meeting.

SUMMARY: The San Juan River RCT will meet to discuss current activities on Federal coal lands in New Mexico and southwest Colorado and to consider future development plans for Federal coal in the region. The public is invited to attend.

The primary purposes of the meeting are to:

1. Inform the RCT on the coal market and industry interest assessment.
2. Inform the RCT on the status of coal Preference Right Lease Applications (PRLA).

DATES: The RCT will meet at 9 a.m. on Tuesday, October 19, 1993.

ADDRESSES: The meeting will be held in the first floor conference room of the Bureau of Land Management (BLM), 1474 Rodeo Road, Santa Fe, New Mexico 87505.

FOR FURTHER INFORMATION CONTACT: James Olson at the Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7455.

SUPPLEMENTARY INFORMATION: The State of New Mexico will present a summary of progress on developing implementation of the State Mine Reclamation Act. The BLM will report on coal PRLA status in New Mexico. The BLM will present new developments in map automation of the Federal and Indian coal leases, PRLA's and competitive tracts in the San Juan Basin. The RCT will consider information obtained from the public in making decisions at this meeting. Anyone wishing to be scheduled to speak at the meeting or to present additional topics for discussion should provide written copies of their remarks or suggestions to James Olsen, Bureau of Land Management, at the above address by Monday, October 11, 1993. Written material will be accepted in lieu of, or in addition to, any oral presentation.

Following is a preliminary agenda for this meeting:

1. Introduction.
2. Approval of minutes of last meeting.
3. Annual BLM coal market/industry interest assessment.
4. Current activity and production on existing leases.
   a. New Mexico.
   b. Colorado.
5. Activities on Salt River Project.
6. Status of PRLA's.
7. Morris 41 Mine Rehabilitation.
8. State Mine Reclamation Act.
9. Automated map of New Mexico lease/tracts/PRLA's.
10. Public comment.
11. Scheduling of next meeting.
12. Adjorn.

Dated: September 29, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 93–25013 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Foothills Parkway; Intent To Prepare an Environmental Impact Statement

AGENCY: Great Smoky Mountains National Park, Tennessee, National Park Service, DOI.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for Section 8B of the Foothills Parkway and notice of public meetings.

SUMMARY:

1. Background and Description of the Proposed Action

The National Park Service (NPS) is initiating planning for construction of Section 8B of the Foothills Parkway between Cosby and Pittman Center, Tennessee. This section of parkway would connect with the previously constructed Section 8A of the Foothills Parkway which runs from Interstate 40 to Cosby.

The Foothills Parkway was authorized in 1944, when Congress passed a law accepting donation of land from the State of Tennessee. The NPS administers the parkway as a portion of the Great Smoky Mountains National Park. The right-of-way for the parkway averages 1000 feet in width except for special uses such as picnic areas, trails and viewing areas were envisioned. To date, approximately 24 miles of the 72-mile parkway have been completed and opened to traffic. Approximately 17 miles, comprised of Sections 8E and 8F are nearing completion. An Environmental Impact Statement (EIS) for Section 8D, which runs approximately 9.9 miles from the Wear Valley Road Interchange to the Gatlinburg Interchange, is currently being prepared. Just over 20 miles remain to be evaluated for environmental impacts. Section 8B of the parkway, approximately 14.1 miles in length, is the next section to be evaluated through the preparation of an EIS.

In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an EIS for Section 8B of the Foothills Parkway. This EIS process will be used to describe the affected environment, give alternative proposals, assess impacts of the project, and propose mitigation methods for impacts. Additionally, the EIS process will be used to provide resource information critical to early design efforts.

2. Scoping Process

Public Involvement: Two workshops/public meetings concerning the proposed action will be held at the date, time, and locations given below.

DATES AND ADDRESSES:

Friday, November 19, 1993, 6 p.m. to 9 p.m. American Legion, Post 202, Highway 321, North, Gatlinburg, Tennessee 37738.
Saturday, November 20, 1993; 10 a.m. to 1 p.m., Pittman Center Town Hall, 2839 Webb Creek Road, Pittman Center, Tennessee 37738.

FOR FURTHER INFORMATION CONTACT: To obtain information or provide comments

other than at the meetings, please contact Randall Pope, Superintendent Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738, telephone (615) 436–1207. The responsible official for this EIS is James W. Coleman, Jr., Regional Director, Southeast Region, 75 Spring Street, SW., Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION:

Representatives from the EIS Team will be present to receive comments and answer planning questions at the public meetings. The pubic is encouraged to attend and submit verbal and/or written comments on the proposed EIS. Comments may also be mailed to the Regional Director at the address above and should be received prior to January 14, 1994.

The draft and final EIS will be distributed to all known interested parties and appropriate agencies. Full public participation by Federal, State and local agencies as well as other concerned organizations and private citizens is invited during this scoping process and throughout the preparation of the document.

Dated: September 29, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region.

[FR Doc. 93–24980 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 2, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 28, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

FLORIDA

Columbia County

Columbia County High School (Lake City MPS), 528 W. Duval St., Lake City, 93001154

Duncan, Horace, House (Lake City MPS), 202 W. Duval St., Lake City, 93001155

Lake City Historic Commercial District (Lake City MPS), Roughly bounded by Railroad, N. Hernando, Duval and N. Columbia Sts., Lake City, 93001157

Lake Isabella Historic Residential District (Lake City MPS), Roughly bounded by East, Duval and Columbia Sts., Baya Ave., Church St. and Lake Isabella, Lake City, 93001156

Manatee County

Whitfield Estates—Broughton Street Historic District, 7207, 7211, 7215, 7219 and 7316 Broughton St., Sarasota, 93001159

Osceola County

Desert Inn, 5570 S. Kenansville Rd., Yeehaw Junction, 93001158

KENTUCKY

Kenton County

Lewisburg Historic District, Roughly bounded by I–75 and the Covington city limits, Covington, 93001165

MISSISSIPPI

Hinds County

Smith Park Architectural District (Boundary Increase), 225 E. Capitol St., Jackson, 93001152

Jasper County

Archeological Site No. 22–Js–572, Address Restricted, Bay Springs vicinity, 93001150

Leflore County

Murphy Site, Address Restricted, Itta Bena vicinity, 93001151

Pontotoc County

Pontotoc Historic District, Roughly, along Main and Liberty Sts. between Reynolds and 8th Sts., Pontotoc, 93001164

TENNESSEE

Dickson County

Farmers and Merchants Bank Building, 201 Main St., White Bluff, 93001161

Hardin County

Savannah Historic District (Boundary Increase), 410 and 506 Main St., Savannah, 93001153

VERMONT

Chittenden County

Chittenden, Giles, Farmstead, Governor Chittenden Rd., NE of Williston village center, Williston, 93001160

WISCONSIN

Dane County

Haight, Nicholas, Farmstead,4926 Lacy Rd., Fitchburg, 93001162

Portage County

Severance—Pipe Farmstead, Pipe Rd., ⅛ mi. E of Co. Hwy. T, E of Amherst, Town of Lanark, Amherst vicinity, 93001163

[FR Doc. 93–24979 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–345]

Certain Anisotropically Etched One Megabit and Greater Drams, Components Thereof, and Products Containing Such Drams

Notice

Notice is hereby given that the prehearing conference and hearing in this matter, previously scheduled to commence at 9 a.m. on October 12, 1993, are cancelled. The prehearing conference will commence at 8 a.m. on October 18, 1993, in Courtroom C (Room 217), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: October 4, 1993.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 93–25056 Filed 10–12–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–33 (Sub-No. 79)]

Union Pacific Railroad Co.—Abandonment—In Canyon and Ada Counties, ID (Stoddard Branch)

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company (UP), to abandon 15.90 track miles and 1.00-mile of rail sidings located between milepost 1.75, near Nampa, and the end of the line at milepost 17.65, near Stoddard, in Canyon and Ada Counties, ID.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to continue; and (2) it is likely that the assistance would fully compensate UP.

Any offers of financial assistance must be filed with the Commission and UP no later than 10 days from the date of publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be made within the 10-day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: October 4, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25199 Filed 10–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 23259]

Peninsula Corridor Joint Powers Board—Trackage Rights Exemption—Southern Pacific Transportation Co.; Exemption

Southern Pacific Transportation Company (SPT) has agreed to extend for an additional 120 days its grant of 4.7 miles of overhead trackage rights to Peninsula Corridor Joint Powers Board (JPB) between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7).[1] The extension of the trackage rights was to become effective on or after October 1, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ad initio*. 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: David J. Miller, Hanson, Bridgett, Marcus, Vlahos & Rudy, 333 Market Street, Suite 2300, San Francisco, CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: October 1, 1993.

By the Commission, David M. Knoschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25086 Filed 10–12–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32358]

Indiana Southern Railroad, Inc—Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company (Soo) has agreed to grant overhead trackage rights to Indiana Southern Railroad, Inc. over 5.8 miles of rail line between Soo milepost 224.1 at or near Elnora, IN, and Soo milepost 218.3 at or near Bee Hunter, IN. The trackage rights were to become effective on or after September 30, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. 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: Karl Morell, Taylor, Morell & Gitomer, 919 18th Street, N.W., Suite 210, Washington, DC 20006.

As a condition to use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage* Rights—BN, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: October 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–25085 Filed 10–12–93; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–080]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by November 12, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Acting Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ms. Eva L. Layne, Acting NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0054), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358–1374.

Reports

Title: NASA FAR Supplement Part 18–43, Contract Modifications.
OMB Number: 2700–0054.
Type of Request: Extension.
Frequency of Report: On occasion.
Type of Respondent: State or local governments, Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations.
Number of Respondents: 145.
Responses per Respondent: 2.
Annual Responses: 290.
Hours per Response: 50.
Annual Burden Hours: 14,500.
Abstract-Need/Uses: Contractor submittal of proposals in response to change change orders.

Dated: October 6, 1993.

Eva L. Layne,

Acting Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93–25070 Filed 10–12–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for an Arts in Education Newsletter

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

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[1] SPT and JPB own parallel lines between these points. They agreed to grant limited term trackage rights to each other while they studied the feasibility of coordinated use of the lines to achieve more efficient freight, intercity passenger, and commuter rail operations in this area. See previous notices of exemption in Finance Docket Nos. 32091 and 32094 and extensions of these exemptions in Finance Docket Nos. 32159, 32161, 32200, 32202, 32300, and 32303. This further extension is necessary because the parties have been unable to reach a final agreement. JPB has agreed to grant SPT a similar trackage rights extension in Finance Docket No. 32360.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the development, production, and dissemination of a quarterly newsletter for State Arts Agency Arts in Education Coordinators, and others, such as state department of education specialists, Alliance for Arts Education chapters, and arts and arts education service organizations. Funding is limited to $10,000. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–02 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–02 is scheduled for release approximately November 5, 1993 with proposals due December 6, 1993.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 93–25017 Filed 10–12–93; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Expansion Arts Advisory Panel (Visual Arts/Media/Design/Literary Arts Section) to the National Council on the Arts will be held October 26–28, 1993 from 9 a.m. to 6 p.m. on October 26 and October 27, 1993, and from 9 a.m. to 5:30 p.m. on October 28, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of these meetings will be open to the public on October 26, 1993 from 9:15 a.m. to 10:30 a.m. for general overview and opening remarks, and from 3 p.m. to 5 p.m. on October 28, 1993 for a policy discussion.

The remaining portions of these meetings from 10:30 a.m. to 6 p.m. on October 26, 1993, from 9 a.m. to 6 p.m. on October 27, 1993, and from 9 a.m. to 3 p.m. on October 28, 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 pubic, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: October 6, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–25038 Filed 10–12–93; 8:45 am]

BILLING CODE 7537–01–M

Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings 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 discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* November 1, 1993.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Translations program applications in Literature, Philosophy and Religion, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.

2. *Date:* November 3, 1993.
Time: 9 a.m. to 5 p.m.
Room: M–14.
Program: This meeting will review Translations program applications in Slavic, Germanic, and Jewish Studies, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.

3. *Date:* November 4–5, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during the September 11, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after April 1, 1994.

4. *Date:* November 5, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted for the October 1, 1993 deadline in Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

5. *Date:* November 8, 1993.
Time: 9 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Conferences projects in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after March 1, 1994.

6. *Date:* November 8, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1993 deadline in Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

7. *Date:* November 15, 1993.

Time: 8 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during the September 1993 deadline, submitted to the Division of Public Programs, for projects beginning after April 1994.

8. *Date:* November 15, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted to Humanities Projects in Media program during September, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after April 1994.

9. *Date:* November 16, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October deadline in Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

10. *Date:* November 22, 1993.
Time: 9 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review proposals submitted to the October 1, 1993 deadline in the Higher Education Program, submitted to the Division of Education Programs, for projects beginning after March 1994.

11. *Date:* November 22–23, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review State and Regional Exemplary applications submitted by state humanities councils to the Division of State, for projects beginning after April 1994.

David C. Fisher,

Advisory Committee, Management Officer.

[FR Doc. 93–24981 Filed 10–12–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

AGENCY: National Science Foundation.

ACTION: Notice of draft environmental assessment and request for comments.

SUMMARY: The National Science Foundation (NSF) has prepared a Draft Environmental Assessment for construction and operation of a Laser Interferometer Gravitational-Wave Observatory (LIGO) on the Department of Energy's Hanford Site near Richland, Washington. NSF is inviting public comments on the Draft Environmental Assessment.

DATES: In order to be assured consideration, comments must be received no later than November 13, 1993.

ADDRESSES: Copies of the Draft Environmental Assessment may be obtained from and comments addressed to Dr. David Berley, Program Manager for LIGO, National Science Foundation, 1800 G Street NW., room 341, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Dr. David Berley, 202–357–9575.

Dated: October 7, 1993.

Lawrence Rudolph,

Acting General Counsel.

[FR Doc. 93–25045 Filed 10–12–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

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 September 20, 1993, through September 30, 1993. The last biweekly notice was published on September 29, 1993 (58 FR 50960).

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 November 12, 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, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: September 15, 1993

Description of amendment request: The change would incorporate new pressure-temperature curves covering plant operations through 24 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:

This change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the use of the new Pressure—Temperature operating limits will not change any postulated accident scenarios. The new Pressure—Temperature curves were developed using industry standards and regulations which are recognized as being inherently conservative. The Pressure—Temperature curves provide Reactor Coolant System (RCS) limits to protect the reactor pressure vessel from brittle fracture by clearly separating the region of normal operations from the region where the vessel is subject to brittle fracture. The heatup and cooldown limits are designed to ensure that the 10 CFR Appendix G Pressure—Temperature limits for the RCS are not exceeded during any condition of normal operation including anticipated operational occurrences.

General Design Criterion 32 of Appendix A to 10 CFR 50 requires that the reactor coolant boundary shall be designed with sufficient margin to assure that when stressed under operating, maintenance, testing, and postulated accident conditions, (1) the boundary behaves in a nonbrittle manner and (2) the probability of rapidly propagating fracture is minimized.

Title 10 of the Code of Federal Regulations Part 50 Appendix G, "Fracture Toughness Requirements," requires the effects of changes in the fracture toughness of reactor vessel materials caused by neutron radiation throughout the service life of nuclear reactors to be considered in the pressure-temperature limits. The change is used in conjunction with the material initial reference temperature (RT_{NDT}) to establish the limiting pressure-temperature curves. Regulatory Guide 1.99 contains procedures for calculating the effects of neutron radiation embrittlement of the low-alloy steels currently used for light-water-cooled reactor vessels.

Using the Regulatory Guide 1.99 Revision 2 and Appendix G to 10 CFR 50, new Pressure—Temperature curves were prepared for the projected reactor vessel exposure at 24 Effective Full Power Years (EFPY) of operation. These new curves, in conjunction with the heatup and cooldown ranges and the existing Low-Temperature Overpressure Protection System setpoints, provide the required assurance that the reactor pressure vessel is protected from brittle fracture up to 24 EFPY of operation. No changes to the design of the facility has been made. No new equipment has been added or removed an no operational setpoints have been altered. The revised analysis and resultant adjustment of the operating limitations provide assurance that the Reactor Coolant System is protected from brittle fracture.

Therefore, the proposed amendment to the pressure-temperature limitations do 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 since the use of the new Pressure—Temperature operating limits does not change the postulated accident scenarios. The new curves do not effectively represent any appreciable change in the current methodologies; they merely provide assurance that the Reactor Coolant System is protected from brittle fracture. No new accident or malfunction mechanism is introduced by this amendment and no physical plant changes will result from this amendment. 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 amendment does not involve a significant reduction in the margin of safety. Although the new Pressure—Temperature curves are less restrictive, they were generated with the current accepted conservative methodology using capsule surveillance data. The new Pressure—Temperature curves were developed using industry standards and regulations (ASME Code Section III, and NRC Regulatory Guide 1.99 Rev. 2) which are recognized as being inherently conservative. The use of the new Pressure—Temperature operating limits would not change postulated accident scenarios. 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: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: April 27, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by adding steam generator overfill protection requirements and modifying the equations for the overpower delta T and overtemperature delta T protective functions.

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. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The inclusion of requirements in Technical Specifications for the Steam Generator Overfill Protection System is not assumed in the initiation of any analyzed event. This function is not credited in the mitigation of any analyzed accident. The addition of requirements for the Steam Generator Overfill Protection System helps ensure that continuous addition of cold feedwater and carryover of excessive moisture to the turbine, is prevented. As such, equipment protection is provided by this function. In addition, the consequences of an event occurring with the proposed change are the same as the consequences of an event occurring with the existing requirements. Therefore, this change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will not impose any different requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not involve any reduction in a margin of safety. The function, operation and testing of the installed Steam Generator Overfill System has not changed from that described in the [Updated Final Safety Analysis Report] UFSAR. In addition, the proposed change simply formalizes the existing design, operating and testing requirements in Technical Specifications. As such, the change does 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: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 5, 1993, as revised by letter dated August 27, 1993.

Description of amendment request: This amendment request is an additional followup to the amendment request of May 29, 1992, published in the **Federal Register** on July 8, 1992 (57FR30242), which changed the Technical Specifications Section 1.0, Definitions, to accommodate a 24-month fuel cycle and which proposed the extension of the test intervals for specific surveillance tests. This amendment proposes extending the surveillance intervals to 24 months for the following additional surveillance tests:

(1) Containment Pressure Channels
(2) Steam Pressure Channels
(3) Reactor Coolant Temperature Channels

The licensee has also proposed setpoint changes for the High Containment Pressure channel pressure signal for containment spray and steam line isolation and for the Reactor Coolant Temperature channels providing a reactor trip on Overtemperature delta T. These instrument channel setpoint changes ensure that the trip setpoints remain acceptable after 30 months of instrument drift (24 months and 25% extension). The changes requested by

the licensee related to a 24-month fuel cycle are in accordance with Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." In addition, the licensee has proposed setpoint changes to the Steam Pressure channel high differential pressure between steam lines signal for safety injection and to the steam pressure signal used in coincidence with high steam flow in 2/4 steam lines for safety injection and steam line isolation. These changes are requested to provide for additional operating flexibility.

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) Containment Pressure Channels:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

A statistical analysis of the containment pressure channel uncertainty for a 30 month operating cycle has been performed based upon historical test data.

Based upon this analysis it has been determined that the margin between the Technical Specification limit and the Safety Analysis limit must be increased to accommodate the instrument channel uncertainty for the high pressure setpoint projected for a 30 month operating cycle. A revision of the Safety Analysis limit from 2 psig to 7.3 psig is necessary. The Technical Specification limit of 2 psig remains unchanged. A safety evaluation performed pursuant to 10 CFR 50.59 is on file which supports the change in the Safety Analysis limit. Key conclusions of the Safety Evaluation are that neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report have been increased.

For the high-high pressure setpoint, a change in the Technical Specification limit from 30 psig to 24 psig provides adequate margin to accommodate the projected instrument channel uncertainty over a 30 month operating cycle. The proposed change in the Technical Specification limit also will not result in an increase in the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis report.

Thus assurance is provided that appropriate protective actions in accordance with the Technical Specifications will be taken so that Safety Analysis limits are not exceeded.

2. A significant increase in the probability or consequences of an accident previously evaluated is not involved.

The proposed change in the Technical Specification limit (high-high setpoint), together with the change in the Safety Analysis limit (high pressure setpoint) provide adequate margin to accommodate instrument channel uncertainty over a 30 month operating cycle. Plant equipment, which will be set at (or more conservatively than) Technical Specification limits, will therefore provide protective functions to assure that Safety Analysis limits are not exceeded. This will prevent the possibility of a new or different kind of accident from that previously evaluated from occurring.

3. A significant reduction in a margin of safety is not involved.

The above changes to the Technical Specification limit and the Safety Analysis limit are being made to assure that sufficient margin exists to accommodate instrument channel uncertainty over the extended operating cycle. This margin is necessary to assure that protective safety functions will occur so that Safety Analysis limits are not exceeded. The margin thus provided is equivalent to the margin that previously existed.

[(2) Steam Pressure Channels:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

A statistical analysis of channel uncertainty for a 30 month operating cycle has been performed based upon historical test data.

For the high differential pressure setpoint, the possibility of an extended operating cycle requires revision of a Safety Analysis limit to accommodate the projected channel uncertainty since the plant operating envelope prohibits revision of the current Technical Specification setpoint in the direction that would be required. In fact, the Safety Analysis limit has been increased from 150 to 270 psig, so that the Technical Specification limit may be increased 5 psi to 155 psi to obtain plant operating flexibility.

For the high steam flow coincident with low steam pressure ESF trip, the need for additional operating flexibility dictated a change in the Safety Analysis limit which permitted a change in the Technical Specification limit from 600 psig to 525 psig for plant operating flexibility.

A safety evaluation performed pursuant to 10 CFR 50.59 is on file which supports the change in the Safety Analysis limits. Key conclusions of the Safety Evaluation are that neither the probability of occurrence nor the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report have been increased.

In both cases, the margin between the current Technical Specification limits and the proposed revised Safety Analysis limits provides assurance that plant protective actions will occur as required which will not significantly increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

As substantiated by a safety analysis performed in accordance with 10 CFR 50.59, changes to the licensing basis Safety Analysis identified above have been made. The margin thus provided between the Technical Specification Limit and the Safety Analysis assures that protective action will occur to prevent the occurrence of a new or different kind of accident from that previously analyzed.

3. A significant reduction in a margin of safety is not involved.

A safety evaluation has been performed in accordance with 10 CFR 50.59 which substantiates the changes to the Safety Analysis limits identified above. A key conclusion reached in the safety evaluation is that the margin of safety as defined in the basis for any Technical Specification has not been reduced. In addition, the margin provided by the change in the Safety Analysis limit provides assurance that required protective actions will be taken to preserve the existing margin of safety defined in the plant design.

[(3) Reactor Coolant Temperature Channels:]

The proposed change does not involve a significant hazards consideration since:

1. A significant increase in the probability or consequences of an accident previously evaluated will not occur.

A statistical analysis of the Reactor Coolant Temperature channel uncertainty for a 30 month operating cycle has been performed based upon historical test data. Based on this analysis a change to the Technical Specification constant K1 from 1.25 to 1.22 is required. No change is necessary in K4. Sufficient margin now exists between the Safety Analysis limits and the proposed Technical Specification limits to accommodate projected channel uncertainty over a 30 month operating cycle. A statistical basis will then exist to assure that protective action will occur to prevent Safety Analysis limits from being exceeded. Thus, there will not be a significant increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident previously evaluated has not been created.

Based upon a statistical analysis of past historical test data it has been demonstrated that reasonable assurance exists to conclude that Safety Analysis limits will not be exceeded over a 30 month operating cycle. The Technical Specification limits provide margin with respect to the Safety Analysis limits and confidence that appropriate plant protective response will be provided to prevent the possibility of a new or different kind of accident from that previously evaluated from being created.

3. A significant reduction in a margin of safety is not involved.

The change to the Technical Specification limit proposed is being made to assure that the previously established margin remains between plant protective function set points and Safety Analysis limits. This margin is based upon an evaluation of past historical test data and analytical methods for projecting instrument channel uncertainty over a 30 month operating cycle. It is

therefore concluded that the existing margin of safety has been preserved.

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: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: August 6, 1993

Description of amendment request: The proposed amendment would change the Technical Specifications to implement a reorganization of the Big Rock Point staff. The reorganization changes the Superintendent titles to Manager and adds Safety and Licensing to the list of Plant Review Committee representatives.

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. Will the proposed changes involve a significant increase in probability or consequences of an accident previously evaluated?

The proposed changes are only administrative in nature and are expected to result in improvements in performance of the Big Rock Plant staff. Therefore, they do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Since the proposed changes are only administrative, they will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will the proposed changes involve a significant reduction in the margin of safety?

Since the proposed changes are only administrative, they will not reduce the margin of safety.

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: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: William M. Dean, Acting

Duke Power Company, Docket Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: May 3, 1993, as supplemented August 11, 1993

Description of amendment request: The proposed amendments would revise the limiting conditions for operation and surveillance requirements related to the Low Pressure Service Water (LPSW) System. Specifically, the proposed changes to the Technical Specifications would:

1. Require the third LPSW pump in the shared Unit 1 and 2 LPSW system to be operable;

2. Extend the allowable outage time for one LPSW pump or train inoperable from 24 hours to 72 hours;

3. Extend the allowable time for one Low Pressure Injection train inoperable from 24 hours to 72 hours;

4. Extend the Reactor Building Spray system spray nozzle air flow test interval from 5 years to 10 years;

5. Revise the Reactor Building Cooling Unit (RBCU) testing requirements to show acceptance criteria in terms of response to an Engineered Safeguards (ES) signal;

6. Add a periodic verification of adequate containment heat removal capability; and

7. Make administrative changes which delete redundant 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, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the changes proposed within this amendment request.

The proposed revision assures the ability of the LPSW system to mitigate design basis accidents and adds a new containment heat removal capability surveillance requirement. These changes constitute additional restrictions not presently included in the Technical Specifications.

Current surveillance requirements are clarified to identify the design basis functions being tested (e.g., response to an Engineered Safeguards system actuation and containment heat removal). The design basis safety function of the affected systems in unchanged.

The proposed revision extends the LPI and LPSW system allowable outage times to be consistent with the standard technical specifications. The allowable outage times are reasonable based on the redundant capabilities afforded by the operable train, and the low probability of a DBA [Design Basis Accident] occurring during the period of inoperability.

The proposed revision extends the RB Spray system spray nozzle air flow test interval in accordance with NRC recommendations in NUREG 1366 and the provisions of NUREG 1430.

Associated administrative and editorial changes are included.

Based on the above, there is no significant increase in the probability of any Design Basis Accident (DBA) as a result of this change, nor is there a significant increase in the consequences of a DBA as a result of this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

The proposed changes make no physical changes to the plant configuration and do not adversely affect the performance of any equipment. 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:

Margins of safety associated with these proposed Technical Specifications have been evaluated:

The proposed revision assures the ability of the LPSW system to mitigate design basis accidents and adds a new containment heat removal capability surveillance requirement. These changes constitute additional restrictions not presently included in the Technical Specifications.

Current surveillance requirements are clarified to identify the design basis functions being tested (e.g., response to an Engineered Safeguards system actuation and containment heat removal). The design basis safety function of the affected systems is unchanged.

The proposed revision extends the LPI and LPSW system allowable outage times to be consistent with the standard technical specifications. The allowable outage times are reasonable based on the redundant capabilities afforded by the operable train, and the low probability of a DBA occurring during the period of inoperability.

The proposed revision extends the RB Spray system spray nozzle air flow test interval in accordance with NRC recommendations in NUREG 1366 and the provisions of NUREG 1430.

Associated administrative and editorial changes are included.

Based on the above, there will be no significant 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: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: David B. Matthews

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 7, 1993 and September 24, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications for the incore detection system to allow less than 75% but more than 50% of the incore locations to be operable provided the appropriate penalties are applied to the Core Operating Limit Supervisory System (COLSS) and the Core Protection Calculator System (CPCs). This change would be effective for the remainder of the current Fuel Cycle 6.

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 would relax requirements for the number of operable incore detector locations. The function of the incore detectors is to verify that the core power distribution is consistent with the assumptions used in the safety analysis. Sufficient measurements will be required to adequately verify compliance with power distribution Technical Specification limits. Penalties will be applied to the COLSS and CPCs to account for the increased uncertainties of values measured by the incore detectors prior to using incore detectors to monitor Technical Specification Limits when the number of operable detector locations falls below the current requirement. This will ensure that all current Technical Specification and fuel design limits are protected and the core power distribution assumptions in UFSAR [updated final safety analysis report] analysis remain valid. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously analyzed.

The proposed change will not alter the operation of the plant or the manner in which it is operated. Reducing the minimum number of operable incore detector locations will not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will continue to protect the current Technical Specification power distribution limits. Use of increased measurement uncertainty factors are [sic] required commensurate with the reduction in the minimum number of incore detector locations. The increased measurement uncertainty factors assure that power distribution calculations based on the incore system will continue to be conservative and that the existing LCOs [limiting conditions for operation] specified for Axial Shape Index, Azimuthal Power Tilt, Radial Peaking Factors, Local Power Density, and DNBR [departure from nucleate boiling ratio] will not be exceeded. Therefore, the proposed change will 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: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502

NRC Project Director: William D. Beckner

Entergy Operations, Inc., et al., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 23, 1993

Description of amendment request: This amendment would remove Specification 4.4.1.2.2 that requires a jet pump operability surveillance within 72 hours of entering operational condition 2 and add a clarification to Specification 4.4.1.2.1 that identifies that the requirements of Specification 4.0.4 are not applicable to this surveillance if, with the reactor power greater than 25% rated thermal power (RTP), the surveillance is completed within 4 hours after placing an associated recirculation loop into operation or within 24 hours after reaching greater than 25% RTP.

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. No significant increase in the probability or consequences of an accident previously evaluated results from this change.

The jet pumps are not considered as initiators of any previously evaluated accident. However, a failed jet pump, in the case of a design basis accident, could increase the blowdown area and reduce the capability of reflooding the core. The TS [Technical Specifications], therefore, require that with an inoperable jet pump, the reactor be shutdown. However, this change does not affect the design or operation of the jet pumps or change any parameters that might increase the probability of failure. Thus, the revised surveillance cannot increase the probability of an accident previously evaluated.

The proposed change will delay the requirement to perform the jet pump differential pressure measurement until reactor power is above 25%. The current requirement is replaced by a note which provides time to perform the required surveillances when an associated recirculation loop is placed in operation or when the reactor exceeds 25% power. Below 25% power, low jet pump flow results in indication which precludes the collection of repeatable and meaningful data. The flexibility has previously been approved on two plants of similar design as well as in NUREG 1434, Improved Technical Specifications, Rev. 0. Industry data collected on older vintage BWRs [Boiling Water Reactors] has indicated that failure of the jet pump hold down beams can affect the integrity of the jet pumps. Early stages of degradation can be detected by measuring the differential pressure across the individual jet pumps and comparing the measurements to the loop average. GGNS [Grand Gulf Nuclear Station] has completed the recommended mitigative actions to reduce stress on the jet pump hold down beams. These improvements in association with the requirement to perform the surveillance at the earliest time that meaningful data can be collected will provide a sufficient level of confidence that the integrity of the jet pumps is and will continue to be maintained. Thus, the consequences of an accident previously evaluated are not affected.

Therefore, the probability or consequences of previously analyzed accidents are not significantly increased.

2. The change would not create the possibility of a new or different kind of accident from any previously analyzed.

The change introduces no new mode of plant operation and it does not involve physical modification of the plant. Therefore, operating the plant with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. This change will not involve a significant reduction in a margin of safety.

The jet pumps have no active safety function. However, a failed jet pump, in the case of a design basis accident, could increase the blowdown area and reduce the capability of reflooding the core. Surveillance

Requirement 4.4.1.2.1 provides a sufficient level of assurance (i.e., a margin of safety) that this passive safety function is maintained. The safety margin afforded by Surveillance Requirement 4.4.1.2.2 is minor to negligible.

The Surveillance Requirement 4.4.1.2.2 was imposed on Grand Gulf in response to a jet pump hold down beam cracking concern identified at older BWR–3 plants. Due to reduction of pre-load stresses in the Grand Gulf hold down beams, jet pump lifetime is expected to significantly exceed that exhibited at the BWR–3 plants. The reduced pre-load in conjunction with a complete lack of cracking indication during prior refueling outage UT [ultransic testing] examinations of every jet pump suggests that the benefit of Surveillance Requirement 4.4.1.2.2 (and the equivalent compensatory measures) is relatively low. The mitigative actions previously performed to reduce stress on the jet pump hold-down beams in conjunction with the requirement to perform the surveillance at the earliest time that meaningful data can be collected provides a high level of assurance that the jet pump integrity will be maintained.

Therefore, operating the plant with the proposed change will 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: 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: William D. Beckner

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: August 23, 1993

Description of amendment request: The proposed amendment will delete the option of using a movable incore detector to determine Incore Instrumentation System operability from the provisions of Technical Specification (TS) 3.3.3.2. Florida Power and Light Company (FPL) considers that the burden of maintaining the redundant movable detector system as an option is not justified by any safety significance. Approval of the proposed amendment is requested by February 20, 1994, to support permanent removal of the movable incore detector equipment during the next scheduled refueling outage.

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 license amendment will remove the option of using movable neutron detectors to determine incore instrumentation system operability. Removing this option will thereby support deleting the Movable Incore Detector System (MICDS) from the present plant design. The MICDS is a passive system designed only as an alternative method of monitoring the local neutron flux within the reactor core and does not perform automatic interlock, control, or protective functions. Removal of this passive system can not increase the frequency of occurrence of a neutron flux/power anomaly since the incore detectors are not accident initiators.

Criteria established in the facility Technical Specifications (TS) for monitoring core performance remain unchanged by this proposed amendment. The MICDS is merely a backup system to the Fixed Incore Detector System (FICDS) which will continue to be used, in conjunction with the excore detector systems, to adequately monitor the reactor power distribution. Assumptions made for core power distributions in previously evaluated accidents are not changed nor will they be impacted by removal of the MICDS.

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.

Since the MICDS is a passive system, deletion of the MICDS will not produce any new types of failure. Equipment important to safety will continue to perform their safety functions as previously evaluated and will not be affected by this proposed amendment.

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.

The movable incore detectors are not relied upon for any automatic protective functions and are considered non-safety related. The MICDS only provides flexibility in determining operability of the Incore Instrumentation System. Deletion of the movable detector option from the TS only removes this operational flexibility.

The basis for incore instrumentation operability is unaffected by this change since the minimum complement of equipment (percentage of incore locations operable and core symmetry requirements) to satisfy the Limiting Conditions for Operation remains unchanged. The MICDS is not required to monitor or otherwise evaluate existing margins of safety for plant operation.

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

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: September 3, 1993

Description of amendment request: The proposed amendments modify Turkey Point Units 3 and 4 Technical Specifications (TS) 3/4.7.1.6, Standby Feedwater System and the associated bases to implement plant design modifications to eliminate the non-safety-related cranking diesel generators and to provide a dedicated diesel for the electric motor driver for one of the two Standby Steam Generator Feedwater (SSGF) pumps. The licensee proposed this modification to eliminate high maintenance costs and remove the operational burden associated with the non-safety-related cranking diesel generators. Other editorial changes

would also be made to reflect the proposed amendments. The proposed modifications would preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, relating to auxiliary feedwater (AFW) diversity, reliability, and fire protection requirements.

Background:

The SSGF System is designed with two motor-driven SSGF pumps which are capable of supplying feedwater to both Turkey Point Units 3 and 4 during certain non-design basis and low probability events, such as, a total loss of all normal and auxiliary feedwater concurrent with a loss of offsite power. Additionally, in the event of a fire which disables AFW System equipment in one of the two AFW fire zones coincident with a loss of offsite power, the SSGF pumps would be used for safe shutdown of the plant.

The electric motors for the two SSGF pumps receive power from a non-safety-related "C" bus. Upon a loss of offsite power design basis event, the cranking diesel generators would provide a backup power source to the "C" bus. Presently, the Turkey Point TS establish operability and surveillance requirements to ensure availability of power to the SSGF pumps from the cranking diesel generators.

The licensee proposes to eliminate the cranking diesel generators due to their high maintenance costs. This would be accomplished by replacing the electric motor driver for one of the two Standby Steam Generator Feedwater pumps with a dedicated diesel driver and by repowering various "C" bus loads from safety-related power supplies or other buses capable of being powered from the Emergency Power System. To implement this design modification, the licensee proposed TS changes.

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) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Cranking Diesel Generators serve to provide a backup power source for the Standby Steam Generator Feedwater System, which has been designed to provide emergency feedwater to the steam generators for beyond licensing basis events under conditions where normal and auxiliary feedwater have been lost coincident with a loss of offsite power. The SSGF System also ensures an orderly plant shutdown to meet the requirements of 10 CFR 50, Appendix R, by providing a source of feedwater under conditions where a fire has damaged the AFW System.

Since the proposed Standby Steam Generator Feedwater pump modifications and associated Technical Specification operability/ surveillance requirements enhance the diversity of pump drivers and preserve the capacity, location, and reliability of the subject SSGF pumps, these modifications will serve to ensure that the consequences of the beyond licensing basis events for which they were intended have not been increased. In addition, these modifications preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, which are associated with issues of AFW diversity, reliability, and backup feedwater and fire protection requirements.

A probabilistic risk assessment [Engineering Calculation PTN–BFJR–93–009 for Turkey Point Units 3 and 4, "A Sensitivity Study of Risk Impact for Eliminating the Blackstart Diesels," Revision 0, dated July 30, 1993] has been performed for installation of one dedicated diesel-driver for the "B" Standby Steam Generator Feedwater pump and for elimination of reliance on the Cranking Diesel Generators as a backup source of power for the Standby Steam Generator Feedwater pumps. The results of this risk assessment study demonstrate that the proposed modifications will result in a 0.4% reduction in the current calculated core damage frequency of 5.72E–5 per year. This analysis demonstrates that the modifications to the Standby Steam Generator Feedwater System will have no significant impact on the frequency of core damage, and therefore the probability of failure to prevent certain beyond licensing basis events, for which the SSGF System is intended, ultimately leading to a core melt have not been increased.

The 10 CFR 50, Appendix R criteria do not postulate design bases accidents coincident with fires. In addition, the location of the new diesel driver and its storage tank meets appropriate regulatory criteria and will not lead to an uncontrolled fire which could damage redundant safety related equipment or systems required to achieve and maintain either plant in a safe shutdown condition.

Consequently, the plant modifications and changes in Technical Specifications associated with the SSGF pumps will have no significant effect on the probability or consequences of beyond licensing basis events; and the probability or consequences of any accident or plant event previously evaluated for Turkey Point by the NRC has not been significantly increased.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Cranking Diesel Generators serve to provide a backup power source for the Standby Steam Generator Feedwater System, which has been designed to provide emergency feedwater to the steam generators for beyond licensing basis events under conditions where normal and auxiliary feedwater have been lost coincident with a loss of offsite power. The SSGF System also ensures an orderly plant shutdown to meet the requirements of 10 CFR 50, Appendix R, by providing a source of feedwater under conditions where a fire has damaged the AFW System.

Since the proposed SSGF pump modifications and associated Technical Specification operability/surveillance requirements enhance the diversity of pump drivers and preserve the capacity, location, and reliability of the subject SSGF pumps, these modifications will serve to ensure that the possibility of a new or different kind of accident from any previously evaluated will not be created. In addition, these modifications preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, which are associated with issues of AFW diversity, reliability, and backup feedwater and fire protection requirements.

The 10 CFR 50, Appendix R criteria do not postulate design bases accidents coincident with fires. In addition, the location of the new diesel driver and its storage tank meets appropriate regulatory criteria and will not lead to an uncontrolled fire which could damage redundant safety related equipment or systems required to achieve and maintain either plant in a safe shutdown condition.

Consequently, the plant modifications and changes in Technical Specifications for the power driver of the SSGF pumps will not create the possibility of a new or different kind of accident from any accident previously evaluated by the NRC, and the possibility of a new or different kind of accident from any accident previously evaluated has not been increased.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The Cranking Diesel Generators serve to provide a backup power source for the Standby Steam Generator Feedwater System, which has been designed to provide emergency feedwater to the steam generators for beyond licensing basis events under conditions where normal and auxiliary feedwater have been lost coincident with a loss of offsite power. The SSGF System also ensures an orderly plant shutdown to meet the requirements of 10 CFR 50, Appendix R, by providing a source of feedwater under conditions where a fire has damaged the AFW System.

Several options were considered to eliminate operating reliance on the Cranking Diesel Generators for the Standby Steam Generator Feedwater System. FPL [Florida Power and Light Company] decided to remove one of the electric motor-driven SSGF pumps and replace it with a dedicated diesel-driven SSGF pump assembly with a capacity equal to the original pump in its original location. This will serve to preserve the capacity and location of the original installation, while enhancing the level of diversity in the power drivers for the pumps. Since a single SSGF pump can supply sufficient feedwater flow to both units, the availability of the diesel-driven SSGF pump alone will be sufficient to preclude a loss of secondary cooling for those beyond licensing

basis events which involve a total loss of normal and AFW cooling coincident with a loss of offsite power.

Even though the installation of the new diesel-driven SSGF pump will mean a significant increase in the amount of combustible fluids (diesel fuel oil) present at the location of the SSGF pumps, the location of the new diesel driver and its storage tank are located sufficiently far from safety related equipment and will be designed to include a secondary containment for fuel oil spills. This configuration will ensure that an inadvertent diesel fuel oil spill will not result in an uncontrolled fire which could damage redundant safety related equipment or systems required to achieve and maintain either plant in a safe shutdown condition.

Since the proposed SSGF pump modifications and associated Technical Specification operability/surveillance requirements enhance the diversity of pump drivers while preserving the capacity, location, and reliability of the subject SSGF pumps, these modifications will serve to ensure that the margin of safety for the Standby Steam Generator Feedwater System is preserved. In addition, these modifications preserve existing licensing commitments applicable to the Standby Steam Generator Feedwater System, which are associated with issues of AFW diversity, reliability, and backup feedwater and fire protection requirements. Therefore, the Standby Steam Generator Feedwater System modifications and associated changes in Technical Specification 3/4.7.1.6.3 does not involve a 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 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: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 20, 1993

Description of amendment request: The amendment revises the TMI–1 Technical Specifications to reflect a partial GPU Nuclear reorganization to become effective when TMI–2 enters the Post-Defueling Monitored Storage (PDMS) mode. This reorganization includes deleting TMI–2 as a division and incorporating those functions and responsibilities required to maintain the PDMS condition and requirements into the current TMI–1 Division. The TMI–1 Division will be renamed the TMI Division. In addition to the change associated with the PDMS-related reorganization, some obsolete organizational titles are updated.

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:

GPUN has determined that this Technical Specification Change Request involves no significant hazards consideration as defined by NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequence of an accident previously evaluated. The organizational aspects important to safety as identified in Generic Letter 88–06 are not changed by this proposed amendment. Therefore, this change does not increase the probability of occurrence or the consequence 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. This activity modifies the TMI site organization to consolidate TMI–1 and PDMS TMI–2 operations and maintenance. The important to safety aspects of organization are not impacted. Thus, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This reorganization is a managerial change that incorporates the operation and maintenance of TMI–2 in its PDMS condition into the Operations and Maintenance structure of TMI–1, now that TMI–2 is in a relatively passive, monitored state. The majority of the tasks associated with maintaining TMI–2 in PDMS will be supervised and accomplished by the PDMS Manager, whose primary responsibility is TMI–2. The attention that the TMI–1 Control Room staff gives to TMI–2 will be minimal and will not detract in any measurable way from their attention to operating TMI–1. Also, the proposed change that updates obsolete organizational titles is merely an administrative update since the current titles fully incorporate all functions and responsibilities associated with the obsolete titles. Thus, operation of the facility in accordance with the proposed amendment does 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: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1993

Description of amendment request: The proposed amendment would add requirements for primary containment isolation of the drywell air sampling system and clarify requirements for primary containment isolation signals.

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 addition of the drywell air sampling system isolation to the tables listing primary containment isolation valves and clarification of the requirements for instrumentation that initiates primary containment isolation will ensure primary containment integrity requirements are maintained for this system. Revisions to the action statements for the instrumentation that initiate primary containment isolation signals will ensure, when these instruments become inoperable, that the affected systems are isolated or the plant is placed in a condition where operability of the instrumentation is not required. By ensuring primary containment isolation during accidents as previously evaluated, these changes will not result in an increase in the probability or consequences of a previously evaluated accident.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The addition of the drywell air sampling system isolation to the tables listing primary containment isolation valves and clarification of the requirements for instrumentation that initiates primary containment isolation will ensure primary containment integrity requirements are maintained for this system. Revisions to the action statements for the instrumentation that initiate primary containment isolation signals will ensure, if the instrumentation becomes inoperable, that the affected systems are isolated or the plant is placed in a condition where operability of the instrumentation is not required. These changes will ensure the primary containment functions during accidents as previously evaluated and will not result in an accident of a new or different type.

The proposed changes will not create a significant reduction in the margin of safety.

The addition of the drywell air sampling system isolation to the tables listing primary containment isolation valves and clarification of the requirements for instrumentation that initiates primary containment isolation will ensure primary containment integrity requirements are maintained for this system. Revisions to the action statements for the instrumentation that initiate primary containment isolation signals will ensure, if the instrumentation becomes inoperable, that the affected systems are isolated or the plant is placed in a condition where operability of the instrumentation is not required. These changes will ensure the primary containment functions during accidents as previously evaluated and will not reduce 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: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499

NRC Project Director: William D. Beckner

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: August 31, 1993

Description of amendment request: The proposed amendment would revise Technical Specification sections pertaining to the Standby Gas Treatment System, Secondary Containment, and Primary Containment Isolation Valves for consistency with NUREG–1433, "Standard Technical Specifications for General Electric Plants (BWR/4)." The proposed amendment would also renumber pages, capitalize defined terms, make consistent the use of the terms "containment automatic isolation valves" and "ventilation system automatic valves," and make miscellaneous other changes of an editorial nature.

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 proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

1. The first part of Proposed Change No. 106 revises Section 3/4.7.B, Standby Gas Treatment (SGT) System, in order to be consistent with NUREG–1433, Standard Technical Specifications (STS) for General Electric Plants (BWR/4). This portion of the proposed change consists of adding a new surveillance requirement (SR) to demonstrate, at least once per operating cycle, that each SGT subsystem can maintain [greater than or equal to] 0.25 inches water vacuum for at least 1 hour at a flow rate of [less than or equal to] 1780 cubic feet per minute (CFM). Also included is a rewording to the Limiting Condition for Operation (LCO) governing actions to be taken if the SGT system is made or found inoperable, and two clarifications based on STS.

All of the above changes are based on suggested wording contained in STS and represent requirements that are more explicit or restrictive than what are currently in place. These individual changes do not involve any physical modification of the plant or delete any Technical Specification requirements currently in place. They do not involve a change in plant settings and do not affect any accident initiators. For the reasons given above, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The second part of Proposed Change No. 106 revises a condition contained in the definition of Secondary Containment Integrity, Section 3/4.7.C, Secondary Containment, and the associated Bases section in order to be consistent with STS. This portion of the proposed change includes a clarification of a condition contained in the definition of Secondary Containment Integrity and a creation of an LCO to clearly specify actions to be taken when a given secondary containment automatic isolation valve becomes inoperable. A new 31-day surveillance requirement has been added to verify that secondary containment penetration lines containing inoperable valves, are verified isolated.

Two additional SRs are also proposed; 1) that isolation time of the individual automatic isolation valves will be demonstrated at least once per operating cycle and, 2) to verify Secondary Containment Integrity through leak testing or evaluation of the affected area of the pressure retaining boundary prior to declaring Secondary Containment Integrity restored. Two new conditions (described as "operations with a potential for draining the reactor vessel with irradiated fuel in the vessel" and "core alterations with irradiated fuel in the vessel"), for determining when Secondary Containment Integrity is required, have also been added to the LCOs. The term "with irradiated fuel in the vessel" is not contained in STS, but is added to simply provide a clarification. These two new conditions effectively replace an existing condition regarding the movement of loads which could potentially damage irradiated fuel.

All of the above described changes, with the exception of the second new SR proposed, are based on STS. The second SR replaces an existing SR that is not implementable due to the fact that CNS secondary containment, by design, cannot be compartmentalized from a Secondary Containment Integrity standpoint. Furthermore, the ventilation system serving the Reactor Recirculation Motor-Generator (RRMG) sets would have to isolate in order to utilize SGT to create the required vacuum. Isolation of this portion of the ventilation system could result in a RRMG high-temperature trip, thus leading to a plant transient. Replacement of the old SR with the new SR removes the potential of creating a plant transient through implementation of the old SR, thus reducing the probability of an accident previously evaluated. Also, the LCO prohibiting continued reactor operation following a loss of secondary containment greater than 4 hours (when secondary containment is required) is unaffected by this SR change, and remains the dominant requirement. All of the above described changes provide additional Technical Specification controls on the management of secondary containment, and therefore will provide additional assurance that Secondary Containment Integrity continues to be met.

The individual changes contained within this proposed change do not involve any physical modification of the plant, do not affect any accident initiators, nor do they change any assumptions in the accident evaluations. There are no changes in plant settings that affect plant operation response. For the reasons given above, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. The third part of Proposed Change No. 106 revises a condition contained in the definition of Primary Containment Integrity and Section 3/4.7.D, Primary Containment Automatic Isolation Valves, in order to be consistent with STS. This portion of the proposed change revises the subject definition to include additional conditions for inoperable primary containment automatic isolation valves. This change revises Section 3/4.7.D to specify actions, including the establishment of time limits based on STS, to be taken when a given primary containment automatic isolation valve becomes inoperable. This part of the proposed change does not involve any physical modification of the plant or delete any Technical Specification requirements currently in place. There are no changes in plant settings that affect the plant operation response, nor are there any changes that affect any assumptions in the accident evaluation.

The new 31-day surveillance requirement places a specified time period for the verification of one closed manual valve, blind flange, or de-activated automatic valve secured in the closed position, in lines containing an inoperable valve. This surveillance requirement replaces an existing surveillance requirement with a more explicit verification requirement and provides a higher assurance that Primary Containment Integrity is being met. For the reasons given above, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

4. The fourth part of Proposed Change No. 106 involves numerous editorial changes not directly related to the Standby Gas Treatment, Secondary Containment, or Primary Containment Automatic Isolation Valve portions of this proposed change. These changes include, but are not limited to, page renumbering, capitalization of defined terms, making consistent the use of the terms "containment automatic isolation valves" and "instrument line excess flow check valves". These changes are editorial in nature, and have no impact on plant equipment, plant design, or operations. These editorial changes do not modify or add any initiating parameters. Therefore, the District concludes that this part of the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation

1. The first part of Proposed Change No. 106 revises Section 3/4.7.B, Standby Gas Treatment (SGT) System, in order to be consistent with STS. This portion of the proposed change adds a new SR regarding the demonstration of SGT to maintain [greater than or equal to] 0.25 inches of water vacuum for at least 1 hour at [less than or equal to] 1780 CFM, a revision to the LCO governing actions to be taken if the SGT system is made or found inoperable, and two clarifications based on STS. All of the above changes are based on suggested wording contained in STS and represent requirements that are more explicit or restrictive than what are currently in place. These individual changes do not constitute any changes or additions to any hardware or changes in plant configuration. These individual changes do not introduce any new modes of plant operation. Both the revised LCO and the proposed SR are more restrictive than current Technical Specification requirements. Therefore, the District concludes that this part of the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

2. The second part of Proposed Change No. 106 revises a condition contained in the definition of Secondary Containment Integrity, provides a new LCO (Section 3/4.7.C) to clearly specify actions to be taken when a given secondary containment automatic isolation valve becomes inoperable, adds a new 31-day SR to verify that secondary containment penetration lines containing inoperable valves, are isolated, along with two additional SRs and two new conditions that must exist in order to not require secondary containment. All of the above described individual changes are based on STS except for a new SR which requires the affected area of the pressure retaining boundary to be verified through qualitative leak testing or evaluation prior to declaring Secondary Containment Integrity restored.

The SR that is not based on STS replaces an existing SR that is not implementable during normal plant operations, and if implemented, could result in a RRMG high-temperature trip, thus leading to a plant transient. Implementation of the proposed SR does not require system lineups or tests that have not been previously analyzed; thus cannot create the possibility for a new or different accident from any accident previously evaluated.

The individual changes contained in this portion of the proposed change do not involve a change in plant design, do not introduce a new mode of plant operation, nor will they contribute to a change in the plant's transient response. Therefore, the District concludes that this part of proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

3. The third part of Proposed Change No. 106 revises the definition of the term Primary Containment Integrity, revises Section 3/4.7.D to more clearly specify actions regarding inoperable containment automatic isolation valves. These individual changes do not constitute any hardware changes, additions, or changes in plant configuration. These changes do not introduce any new modes of plant operation, or contribute to a change in the plant's transient response. There are no technical changes as to the limiting conditions for operations that must be satisfied. The new 31-day surveillance requirement is more restrictive than current Technical Specification requirements in that it provides explicit instruction for ensuring that a given penetration(s) is isolated. Therefore, the District concludes that this part of the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

4. The fourth part of Proposed Change No. 106 involves numerous editorial changes not directly related to the Standby Gas Treatment, Secondary Containment, or Primary Containment

Automatic Isolation Valve portions of this proposed change. These individual changes do not involve any alteration to the plant design, setpoints, or operating parameters, nor do they introduce or change any mode of plant operation. Therefore, this part of the proposed change does not create the possibility for a new or different kind of accident from any accident previously evaluated.

C. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

1. The first part of Proposed Change No. 106 revises Section 3/4.7.B, Standby Gas Treatment (SGT) System, in order to be consistent with STS. This portion of the proposed change consists of the addition of a new SR (from STS), revision to an existing LCO to be more explicit regarding actions to be taken if the SGT system is made or found inoperable, and two clarifications. All of the above changes are based on suggested wording contained in STS and represent requirements that are more explicit or restrictive than what are currently in place. These individual changes do not involve any change to plant design, equipment, instrument setpoint settings, or operation. Therefore, the District concludes that this part of the proposed change does not create a significant reduction in the margin of safety.

2. The second part of Proposed Change No. 106 revises a condition contained in the definition of Secondary Containment Integrity, provides a new LCO (Section 3/4.7.C) to clearly specify actions to be taken when a given secondary containment automatic isolation valve becomes inoperable, adds a new 31-day SR to verify that secondary containment penetration lines containing inoperable valves, are isolated, along with two additional SRs and two new conditions that must be met in order to not require secondary containment. All of the above described individual changes are based on STS except for a new SR which requires qualitative leak testing or evaluation of the affected secondary containment pressure retaining boundary prior to declaring Secondary Containment Integrity restored.

None of the new requirements result in operation or testing that is different than what is currently being performed. Therefore, the District concludes that this part of the proposed change does not create a significant reduction in the margin of safety.

3. The third part of the proposed change revises the definition of the term Primary Containment Integrity to clarify conditions to be met regarding inoperable primary containment automatic isolation valves. This change revises Section 3/4.7.D to specify actions to be taken when a given primary containment automatic isolation valve becomes inoperable. The individual changes do not change the operating requirements specified in the Technical Specifications, but are more restrictive in that they provide explicit instruction regarding actions to be taken when a primary containment automatic isolation valve is found inoperable. By placing these requirements into LCO 3.7.D and providing a 31-day surveillance requirement for lines containing inoperative valves, the margin of safety is not reduced. None of the proposed individual changes involve any change to the plant design, equipment, instrument setpoint settings, or operation. Therefore, the District concludes that the proposed change does not create a significant reduction in the margin of safety.

4. The fourth part of Proposed Change No. 106 involves numerous editorial changes not directly related to the Standby Gas Treatment, Secondary Containment, or Primary Containment Automatic Isolation Valve portions of this proposed change. These individual changes do not involve any change to plant design, equipment, instrument setpoint settings, or operation. Therefore, the District concludes that this part of the proposed change does not create 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: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602–0499

NRC Project Director: William D. Beckner

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: May 7, 1993, as superseded September 28, 1993

Description of amendment request: The proposed amendment would supersede in its entirety a previous proposed amendment which was submitted by letter dated May 7, 1993. A notice of application and proposed no significant hazards consideration determination for the May 7, 1993, submittal was published in the **Federal Register** on June 9, 1993 (58 FR 32386); this notice supersedes the June 9, 1993, notice in its entirety.

The proposed amendment would add a new Technical Specification (TS) 3/4.10.7, "Inservice Leak and Hydrostatic Testing," to the Nine Mile Point Nuclear Station, Unit 2, TS. The proposed amendment would also include corresponding changes to the TS Index, Table 1.2, and provide Bases for TS 3/4.10.7. Proposed TS 3/4.10.7 would permit the unit to remain in OPERATIONAL CONDITION 4 with reactor coolant temperatures being increased to 212 degrees F during inservice leak or hydrostatic tests provided the following OPERATIONAL CONDITION 3 TSs are being met: (a) TS 3.3.2, "Isolation Actuation Instrumentation," Functions 1.a.2, 1.b, and 3.a and b of TS Table 3.3.2–1; (b) TS 3.6.5.1, "Secondary Containment Integrity;" (c) TS 3.6.5.2, "Secondary Containment Automatic Isolation Dampers;" and (d) TS 3.6.5.3, "Standby Gas Treatment System."

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 operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are requested to allow inservice leak and hydrostatic testing with the reactor in OPERATIONAL CONDITION 4 and the average reactor coolant temperature up to 212°F. The change to allow inservice leak and hydrostatic testing in OPERATIONAL CONDITION 4 will not increase the probability or the consequences of an accident. The probability of a leak in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by considering the reactor in OPERATIONAL CONDITION 4. The hydrostatic or inservice leak test is performed near water solid, all rods in, and temperature [less than or equal to] 212°F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be OPERABLE and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leak testing. Requiring secondary containment to be OPERABLE will conservatively ensure that potential airborne radiation from leaks will be filtered through the Standby Gas Treatment System, thereby limiting radiation releases to the environment. Therefore, the changes will not significantly increase the consequences of an accident.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize, allowing the low pressure ECCS [Emergency Core Cooling System] subsystems to operate. The capability of the subsystems that are required for OPERATIONAL CONDITION 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic testing program. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Allowing the reactor to be considered in OPERATIONAL CONDITION 4 during inservice leak or hydrostatic testing, with reactor coolant temperature up to 212°F, essentially provides an exception to OPERATIONAL CONDITION 3 requirements, including OPERABILITY of primary containment and the full complement of redundant Emergency Core Cooling Systems. The hydrostatic or inservice leak test is performed near water solid, all rods in, and temperature [less than or equal to] 212°F. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above Technical Specification limits are minimal. In addition, secondary containment will be OPERABLE and capable of handling airborne radioactivity or leaks that could occur.

The inservice leak or hydrostatic test conditions remains unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. There are no alterations of any plant systems that cope with the spectrum of accidents. The only difference is that a different subset of systems would be utilized for accident mitigation from those of OPERATIONAL CONDITION 3. Therefore, this will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes allow inservice and hydrostatic testing to be performed with reactor coolant temperature up to 212°F and the reactor in OPERATIONAL CONDITION 4. Since the reactor vessel head will be in place, secondary containment integrity will be maintained and all systems required in OPERATIONAL CONDITION 4 will be operable in accordance with the Technical Specifications, the proposed changes will not have any impact on any design bases accident or safety limit. The hydrostatic or inservice leak testing is performed near water solid, all rods in, and temperature [less than or equal to] 212° [F]. The stored energy in the core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. The RPV [Reactor Pressure Vessel] would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally operable in OPERATIONAL CONDITION 4 would be adequate to keep the core flooded. This would ensure that the fuel would not exceed the 2200°F peak clad temperature limit. Moreover, requiring secondary containment, including isolation capability, to be operable will assure that potential airborne radiation can be filtered through the Standby Gas Treatment System.

This will assure that doses remain well within the limits of 10 CFR [Part] 100 guidelines. Small system leaks would be detected by inspection before significant inventory loss has occurred. Therefore, this special test exception will 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 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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: Robert A. Capra

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 27, 1993

Description of amendment request: The proposed amendment would

change the footnote on page 1 of License NPF–86 by deleting Vermont Electric Generation and Transmission Cooperative, Inc., (VEG&T), as one of the entities for which North Atlantic Energy Service Corporation (North Atlantic) is authorized to act. This change would reflect the purchase of VEG&T's share of the Seabrook Station by North Atlantic Energy Corporation (NAEC) pursuant to a prior settlement of a claim by VEG&T against Public Service Company of New Hampshire (PSNH). NAEC acquired PSNH's interest in the Seabrook Station in accordance with the Plan for Reorganization for PSNH.

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.

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The proposed change merely reflects the transfer of ownership of a small fraction (0.41259%) of the Seabrook Station to consummate a settlement entered into by VEG&T and PSNH in connection with the resolution of certain claims made by VEG&T against PSNH in the PSNH bankruptcy proceedings. The change does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility. No other provisions of the license and no Technical Specification are affected, and all plans and programs in effect at the Seabrook Station remain unchanged.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the change does not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

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: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Grey, One International Place, Boston Massachusetts 02110–2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: September 13, 1993

Description of amendment request: The proposed amendment would change certain sensor errors stated in Table 2.2–1, Reactor Trip System Instrumentation Trip Setpoints. Specifically, the specified sensor errors for the Power Range, Neutron Flux High Setpoint (Functional Unit 2. a.,) and the Power Range, Neutron Flux Low Setpoint (Functional Unit 2. b.) both would be changed to incorporate the Nuclear Instrumentation Cabinet Power Meter accuracy and readout error.

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.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely incorporate the cabinet power meter accuracy and readout error to permit the use of the cabinet power meter when performing the daily comparison of calorimetric to excore power. Currently, a digital voltmeter must be connected to a test point to perform the required measurement introducing the potential for inadvertent Reactor Protection System channel actuation. No other parameters associated with the power range neutron flux level trips are affected. The protection provided by these trips is not altered in any way.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the protection provided by these instruments is not affected in any way, and the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the power range neutron flux level trip setpoints are not changed. Therefore, the protection provided by the these instruments is not altered in any manner.

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: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110–2624.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 17, 1993

Description of amendment request: The proposed amendment to the Technical Specification (TS) would revise the minimum requirement of fuel oil that must be in the Emergency Diesel Generator (EDG) fuel oil storage tank in TS 2.7(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:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The current configuration of the fuel oil supply system for emergency diesel generators does not meet the capacity requirements of IEEE–308 as being capable of providing fuel for 7 days of diesel generator operation following the most severe accident. Allowing credit for the use of the auxiliary boiler fuel oil storage tank will enable the site to meet this criterion. As stated in the Basis of Specification 2.7, it is considered incredible not to be able to secure fuel oil from one of several sources in the vicinity of Omaha in less than three days. Crediting the reserve inventory in FO–10 increases the margin of safety.

Since no change in the EDG fuel oil storage and distribution system's configuration is required to achieve the inventory increase, nor does any fuel oil storage system contribute to any previously analyzed accident sequence, the proposed change does not increase the probability or consequences of previously analyzed accident sequences.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The crediting of the auxiliary boiler fuel oil storage tank reserve inventory as part of the on-site storage capacity for the emergency diesel generators does not create the possibility of a new accident.

OPPD [Omaha Public Power District] has reviewed the design documents for storage tanks FO–1 and FO–10. The review has determined that the two tank vessels are nearly identical with the only difference being the nameplate and current CQE classification. The capacity, foundation, construction materials, construction coed, and initial pressurized leak testing are identical for both tanks. Both tanks have been evaluated for seismic effects and it was concluded that they would remain intact following a design basis earthquake. Both tanks are buried to approximately the same depth and therefore would be equally resistant to impact from a tornado borne missile. The vendor and model numbers for the level indicators for both tanks are also the same.

Emergency Plan Implementing Procedure EPIP–RP–17A, "TSC Administrative Logistics Coordinator Actions," currently provides guidance for transfer of the fuel oil from the auxiliary boiler fuel oil storage tank to the emergency diesel fuel oil storage tank via the transfer pump for the diesel driven auxiliary feedwater pump, should the need arise.

Although the transfer pump for FW–54 is a non-safety-related component, power can be supplied to the transfer pump from either of the two EDG's or from the generator connected to the diesel driver for FW–54. The transfer piping is non-safety-related but is designed and installed to ANSI B31.1–1986 standards. The flow capacity of the transfer pump is 5 gpm. The consumption rate of one emergency diesel generator is less than 3 gpm at peak post accident loading conditions, therefore the transfer pump can provide adequate fuel transfer capabilities.

The tanks are not permanently interconnected, so that a failure of FO–10 or a transfer line would not affect FO–1. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed changes increase the margin of safety by use of a supply of fuel oil reserved in the auxiliary boiler fuel oil storage tank to ensure that the 7 day on site fuel supply criteria is met. Therefore, the proposed 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: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009–5728

NRC Project Director: William D. Beckner

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: August 27, 1993

Description of amendment request: The amendment would reflect an expanded operating domain for Limerick Generating Station (LGS), Units 1 and 2, resulting from the proposed implementation of the Average Power Range Monitor—Rod Block Monitor Technical Specifications/ Maximum Extended Load Line Limit Analysis (ARTS/MELLLA). The improvements associated with the Maximum Extended Load Line Limit (MELLL) mode of operation and the ARTS program are a prerequisite for the Power Rerate Program implementation at LGS, Units 1 and 2.

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 Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The consequences of any accident previously evaluated will not be increased due to operation of Limerick Generating Station (LGS), Units 1 and 2 in the expanded operating domain, as discussed below.

a) Anticipated Operational Occurrences (AOO)

The core-wide AOO included in the LGS, Unit 1 Cycle 5 reload analyses were re-examined for operation in the Maximum Extended Load Line Limit (MELLL) region. Re-examination for operation in the MELLL region for LGS, Unit 1 will be done as part of its next cycle reload analyses. The analytical methods as well as the input assumptions are consistent with the bases for the LGS, Unit 1 Cycle 5 Core Operation Limits Report (COLR). No design or safety limits will be exceeded.

b) Reactor Vessel Overpressure Protection

The Main Steamline Isolation Valve (MSIV) closure with a neutron flux scram event was analyzed at the 102% power/75% flow point using the nuclear parameters resulting from the End of Cycle (EOC) 5 target exposure shape. The results show the peak reactor vessel pressure (i.e., 1,264 psig) is below the 1,375 psig limit.

c) Loss-of-Coolant-Accident (LOCA)

The current Emergency Core Cooling System (ECCS) LOCA analysis is documented in Attachment 3, "Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Limerick Generating Station Units 1 and 2," NEDC–32193P, Revision 1, dated July 1993, and already includes the proposed Average Power Range Monitor – Rod Block Monitor Technical Specifications (ARTS) and MELLL Analysis (MELLLA) application. The LOCA evaluation utilized the General Electric (GE) SAFER/GESTR methodology. This me[t]hodology was approved by the NRC as discussed in a letter from C. O. Thomas (NRC) to J. F. Quirk (GE) "Acceptance for Referencing of Licensing Topical Report NEDE–23785, Revision 1, Volume III(P), the GESTR–LOCA and SAFER Models for the Evaluation of the Loss-of-Coolant-Accident," dated June 1, 1984. The results of this bounding evaluation show for the application of ARTS/MELLLA to LGS Units 1 and 2, the Peak Cladding Temperature (PCT) for a design basis LOCA at 102% core power/75% core flow is judged to be less than the 20° F increase compared to the rated core flow case with 10CFR50, Appendix K assumptions. With the introduction of ARTS, the setdown factor on the flow-referenced APRM rod block system is replaced with a set of power- and flow-dependent Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) and Minimum Critical Power Ratio (MCPR) adjustment factors. One of the criteria for the ARTS Improvement Program has been to ensure that the criteria in 10CFR50.46 are met through the application of the flow-dependent MAPLHGR multipliers. This analysis also establishes a new licensing basis peak cladding temperature of 1,310° F at the current thermal power limit of 3,293 MWt.

Bounding short-term containment response analysis of the design basis LOCA event (i.e., a double-ended guillotine break of a recirculation line) was performed. The results show the peak containment drywell pressure is bounded by the LGS Updated Final Safety Analysis Report (UFSAR) analysis values and remain well below the design value of 55 psig. The bounding event for the containment drywell temperature response is a main steamline break. Under MELLL operation, the increased reactor vessel coolant subcooling has no impact on the steam break flow. Therefore, the peak containment drywell temperature for MELLL operation is bounded by that presented for the main steamline break in the UFSAR Table 6.2–1 and is below the design temperature of 340 °F. The peak values of drywell pressure and temperature are relatively insensitive to reactor operating conditions.

The containment dynamic loads analysis for a LOCA is based on the short-term LOCA analysis described above. The loads considered for MELLLA include pool swell, condensation, oscillation, and chugging. The analysis results show the comparisons are bounded by the corresponding design basis load definition in the UFSAR. The peak containment wetwell airspace pressure during a suppression pool swell period is calculated to be 38.0 psig which is within the design limit of 55 psig.

In addition, the radiological analysis for a LOCA is not affected by implementation of the ARTS/MELLLA changes.

d) Results of the Anticipated Transients Without Scram (ATWS) analysis conducted

for operation in the MELLL domain showed that the maximum values of the key performance parameters (i.e., fuel cladding temperature and reactor vessel bottom pressure) were within the generic limits reported in GE's "Assessment of BWR Mitigation ATWS," Vol. II, NEDO–24222, dated February 1981. The other key performance parameter, suppression pool temperature, shows an increase above 190° F due to operation in the MELLL region. As a result, injection of a sodium pentaborate solution with a higher enrichment of Boron–10 from the Standby Liquid Control System is required to reduce reactivity sooner. Evaluation of the required Boron—10 enrichment of 29% has been determined to be sufficient to satisfy this requirement. Thus, operation in the MELLL domain will have no adverse impact on the capability to mitigate postulated ATWS events in the expanded operating region.

e) Introduction of a statically based Rod Withdrawal Error (RWE). The proposed new RBM system with power-dependent setpoints requires new RWE analyses be performed to determine the MCPR requirements and corresponding setpoints. The generic analysis and its effect on the MCPR safety limits and Critical Power Ratio (CPR) correlations are discussed in Attachment 3, "Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Limerick Generating Station Units 1 and 2," NEDC–32193P, Revision 1, dated July 1993, Subsection 10.3.1. The new RWE analysis for LGS Units 1 and 2, is valid for all GE fuel types including GE 11 and is also applicable to Asea Brown Boveri (ABB) and Siemens Nuclear Power (SNP) qualification fuel bundles. This analyses method will be applied to future core reload analyses to maintain the MCPR safety limit.

f) Control Rod Drop Accident

LGS, Units 1 and 2 employs banked position withdrawal sequences (BPWS) for control rod movement. The Control Rod Drop Accident (CRDA) for BPWS plants have been generically analyzed for GE fuel designs (i.e., "GE Standard Application for Reactor Fuel, GESTAR II," NEDE–24011–P–A–10 and GESTAR II United States Supplement, NEDE–24011–P–A–10–US, dated February 1991) and are applicable to ABB and SNP qualification fuel bundles. A CRDA event is a startup accident evaluated at hot and standby conditions which are unaffected by operation in the MELLL domain. There is no change to the CRDA analysis basis or results as presented in the NEDE reports cited above and therefore the conclusions for CRDA are applicable for operation in the MELLL domain and with the ARTS Improvement Program.

g) Fuel Loading Error

Power operation does not impact the analysis of the fuel loading error accidents. Thus, the bases for the LGS, Unit 1 cycle 5 COLR are applicable to the proposed implementation of the ARTS/MELLLA.

h) Recirculation pump runout

The results in Attachment 3 [of the August 27, 1993 amendment request], "Maximum Extended Load Line Limit and ARTS Improvement Program Analysis for Limerick Generating Station Units 1 and 2," NEDC–32193P Revision 1, dated July 1993 Table 8–1, show the Reactor Internal Pressure Differences are bounded for MELLL operation by the design basis results for recirculation pump runout along the rated rod line and thus, the reactor internals have adequate design margin for operation in the MELLL region.

i) Recirculation pump runback

The recirculation pumps runback intermediate speed will be reset at 42%. The resulting power level when operating on the MELLL Rod line is now sufficiently low enough to be within the nominal capacity of the two feedwater pumps in the event of a feedwater pump trip.

j) Reactor Internals Vibration

To support the operation of LGS, Units 1 and 2 in the MELLL region, the vibration measurements at Browns Ferry Unit 1 were analyzed to determine if there would be any detrimental effects to the reactor internals due to this mode of operation. The results show the maximum steam flow that will be generated in the MELLL region will be no more than from rated power/flow condition. Therefore, the reactor internals inside the reactor vessel shroud and in the upper region of the reactor vessel will not be affected by operation in the MELLL region.

Vibration of the reactor internal components in the annulus region (i.e., outside the reactor vessel shroud) is expected to increase slightly due to the increase in the recirculation drive flow. However, this drive flow will never exceed that at rated core power and rated core flow. Therefore, the flow induced vibration effect on the reactor internal components outside the shroud during MELLL operation would not exceed the acceptance criteria currently established. Thus, operation in the MELLL region will not have any detrimental effects on the reactor internals due to flow induced vibration.

k) Single Loop Operation (SLO)

To support the additional operation domain above the rated line, three key issues were addressed in this study. These were the MCPR fuel cladding integrity safety limit, the MCPR operating limit, and the LOCA analysis for the SLO mode. The studies show the results for one-loop operation cases would not be more limiting than thermal and overpressure consequences of a two pump operation. This conclusion is applicable to SLO conditions within the LGS, Units 1 and 2 expanded operating domain.

The updated SAFER/GESTR–LOCA analysis for SLO was performed using the conservative input assumptions and a 0.9 MAPLHGR multiplier. The required MAPLHGR multipliers at the SLO power-flow condition are more restrictive than the value assumed in the SAFER/GESTR–LOCA analysis for SLO. Therefore, this analysis for SLO is conservative and bounding for LGS, Units 1 and 2.

No new component and/or system interactions that could lead to an accident created by the proposed changes. No new challenges to equipment are involved with implementation of ARTS/MELLLA changes. The probability of any accident is not increased by operating in the expanded operating domain because formulation of the flow-biased Average Power Range Monitor (APRM) rod block trip equation, including a new maximum value for the APRM rod block has been established to maintain margin between the APRM rod block setpoint and the APRM scram setpoint. Additionally, the proposed changes will have no effect on any accident initiating mechanisms. No equipment that is assumed to fail in an accident is affected by implementation of the ARTS/MELLLA changes. Equipment environment, operating conditions, and equipment interactions are not adversely affected by the proposed changes.

The radiological consequences of all analyzed events are unchanged and in addition, the consequences of all the transients will not cause the MCPR safety limit to be exceeded.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the ARTS/MELLLA changes does not create any new failure mode or sequence of events that can lead to an accident of a different type than any previously evaluated. 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 core power/flow condition continues beyond the APRM rod block setpoint. The proposed 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 will not change. Implementation of the ARTS/MELLLA changes does not increase challenges or create any new challenges to safety-related systems or equipment, or other equipment whose failure could cause an accident. The SLCS retains the capability to shutdown the reactor as originally designed. Also, implementation of the ARTS/MELLLA changes does not involve any new challenges to a fission product barrier.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The margin of safety as defined in the TS is not reduced because the results of all the safety analysis are within allowable values. The margin of safety for the MCPR safety limit and the limits associated with a LOCA will be maintained. The peak analyzed containment pressure does not change and thus, the margin of safety for the containment does not change. The SLCS retains the capability to bring the reactor to a cold shutdown condition from full power steady state operating conditions, as originally designed.

Therefore, the proposed TS changes do not involve a 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: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

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: Michael L. Boyle, Acting

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: November 17, 1992

Description of amendment request: The proposed amendments would clarify Technical Specifications 3.1.2.3, "Charging Pump—Shutdown," and 3.1.2.4, "Charging Pump—Operation," to make them consistent with Technical Specification 3.5.3, "ECCS Subsystems—T_{avg} <350 °F," by requiring that only one charging pump or one safety injection pump be operable in Mode 4 when the temperature of any cold leg is less than or equal to 312 °F, Mode 5, or Mode 6 when the head is on the reactor vessel. Technical Specifications 3/4.4.3 for Unit 1 and 3/4.4.5 for Unit 2, "Relief Valves" and Technical Specifications 3.4.9.3 for Unit 1 and 3.4.10.3 for Unit 2, "Overpressure Protection Systems," would be changed to incorporate the guidance provided by the NRC staff in Generic Letter 90–06 (GL 90–06), with one exception. If both power operated relief valves (PORV) or both block valves are inoperable for reasons other than seat leakage, an allowed outage time of 6 hours would be provided to restore at least one PORV or block valve to operable, instead of the one hour recommended by GL 90–06.

An additional change to the Unit 1 Technical Specifications, Section 4.4.9.3.1, has been proposed to delete reference to a specific ASME valve category.

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. Will not involve a significant increase in the probability or consequences of an accident or malfunction of equipment important to safety previously evaluated. This change will [put in place] administrative restrictions on the Low Temperature Overpressure Protection System and the PORVs thereby improving reliability and availability to respond to a Steam Generator Tube Rupture and overpressure transient. The proposed amendment requires that power be maintained to block valves that are closed to isolate a leaking PORV. This change ensures that the block valves can be opened on demand from the control room. Power is maintained to the block valves so that it is operable and may be subsequently opened to allow the PORV to be used to control reactor pressure. This change actually improves overall plant safety. Therefore, the proposed amendment does not involve a procedural or physical change to any structure, system or component that significantly affects accident/malfunction probabilities or consequences previously evaluated in the UFSAR.

2. Will not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment does not involve any physical changes to plant structures, components, or systems. With the exception of maintaining power to a block valve closed to isolate a leaking PORV, which does not create the possibility of a new or different kind of accident, the proposed change will not impose any different requirements on plant operation. Therefore, the proposed changes do not create the possibility of a new or different accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety. The proposed changes actually increase the overall margin of safety by improving the availability and reliability of the PORVs and Block valves in response to Steam Generator Tube Rupture events, and the PORVs in response to overpressure transients.

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: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502

NRC Project Director: Michael L. Boyle, Acting

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: December 17, 1992, as supplemented by two letters, dated April 8, 1993.

Description of amendment request: The proposed amendment would eliminate the use of the high concentration boric acid as a safety-related source for the safety-injection pumps. Analysis for the limiting accident (steam line break) has been performed using only the minimum boron concentration in the refueling water storage tank (RWST) (2000 ppm). Proposed changes are also included to increase allowable outage times (AOTs) and a requirement to allow borating the reactor to a shutdown margin equivalent to at least 2.45% delta k/k at cold shutdown conditions with no Xenon.

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. Excerpts of the licensee's analysis are presented below:

In accordance with 10CFR50.91, this change to the Technical Specification has been evaluated to determine if the operation of the facility in accordance with the proposed amendment would:

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 significant reduction in the margin of safety.

The reduction in the boron concentration of the BASTs [boric acid storage tank] will not affect the probability of an accident because reducing the concentration will not cause a design basis accident to occur. The consequences of previously evaluated accidents has been evaluated in [Attachment C of the licensee's application, dated December 17, 1992.] Since all criteria have been satisfied the consequences of any accident have not increased.

The change to Technical Specifications allows the injection of 2000 ppm boric acid vs. 12%. SI [safety injection] pump suction would be from the RWST. This eliminates the necessity of switching from the BASTs to the RWST, reducing the complexity of the operation. Since the pumps remain connected to the RWST throughout the injection phase there is no possibility of a new or different kind of accident.

The reduction in the concentration of boric acid injected into the primary system for accident mitigation has been analyzed in [Attachment C of the licensee's application, dated December 17, 1992.] [Attachment C of the licensee's application, dated December 17, 1992] concludes that all applicable criteria are satisfied. Since all criteria are satisfied there is no reduction in the margin of safety.

The proposed change to include an action statement when no flow paths are available during core alterations or positive reactivity changes minimizes the potential for reactivity excursions without compensating measures available for reactivity control. This proposed change is also consistent with the action described in NUREG–0452.

The proposed change Specification 3.3.1.2 to include a 1 hour completion to restore the RWST water volume is consistent with NUREG–0452 and considered reasonable.

The proposed increase in the allowable outage times (AOTs) from 24 to 72 hours is based on the low probability of a Design Basis Accident occurring during this period of inoperability and is consistent with NUREG–0452. The NRC evaluation, described in an NRC memorandum to V. Stello, Jr. from R. L. Baer "Recommended Interim Revisions to LCOs [limiting condition for operations] for ECCS [emergency core cooling system] Components," December 1, 1975, concluded that an AOT to 72 hours has only a slight impact on the system average unreliability and is considered negligible. The proposed change to borate to a shutdown margin of at least 2.45% delta k/k with no xenon at cold shutdown conditions compensates for a long term xenon decay and temperature reduction.

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: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Project Director: Walter R. Butler

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 30, 1993

Description of amendment request: The proposed amendment would add an Action statement to Technical Specification (TS) 3/4.6.4.3, "Containment Hydrogen Dilution System," which would apply when both containment hydrogen dilution (CHD) systems are inoperable and allow 72 hours to return one of the two inoperable CHD systems to operable status or be in at least Hot Standby within the next six hours. Also, the associated TS Bases Section 3/4.6.4, "Combustible Gas Control," would be revised to clarify the discussion of the CHD and containment hydrogen purge systems, and to add mention of the capability to install an external hydrogen recombination system. The proposed amendment completely supersedes the application submitted on December 21, 1992, which was noticed in the **Federal Register** on February 3, 1993 (58 FR 7007).

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:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no Updated Safety Analysis Report (USAR) accident initiators are affected by the proposed changes. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours has no bearing on the probability of an accident previously evaluated. The proposed changes to TS Bases 3/4.6.4 provide additional clarifying information regarding the containment Hydrogen Purge System Filter Unit and the Hydrogen Recombiner System, and have no adverse effect on the probability of experiencing an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate accident conditions or assumptions used in evaluating the radiological consequences of any accident. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution system to be inoperable for up to 72 hours does not alter the source term, containment isolation, or allowable releases, and therefore will not increase the radiological consequences of a previously evaluated accident. The proposed changes to TS Bases 3/4.6.4 provide additional clarifying information regarding the Containment Hydrogen Purge System Filter Unit and the Hydrogen Recombiner System, and have no adverse effect on the consequences of an accident previously evaluated.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new types of failures or accident initiators are introduced by the proposed changes.

2b. Not create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators or failure mechanisms are introduced by the proposed changes.

3. Not involve a significant reduction in the margin of safety. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours will not have an adverse effect on the margin of safety because the lower flammability limit of four percent by volume hydrogen would not be reached until approximately 28 days following a postulated Loss of Coolant Accident (LOCA). This provides ample time to either restore at least one containment hydrogen dilution system to functionality (depending on the location and cause for inoperability), or to install the external hydrogen recombination system, in the highly unlikely event that a LOCA occurs during the 72-hour allowable outage time. All accident analyses will remain valid. The proposed changes to TS Bases 3/4.6.4 provides additional clarifying information and have no adverse impact on 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 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 Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

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.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 1, 1993

Brief description of amendments: The amendments provide changes and clarifications which separate the requirements for borated water sources and flow paths needed in Mode 1 above 80 percent of rated thermal power to mitigate a small break loss-of-coolant accident from the requirements for borated water and flow paths needed in Modes 1 through 4 to provide emergency boration.

Date of issuance: September 20, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 182 and 159

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25852) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 20, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: October 30, 1992

Brief description of amendment: This amendment revises Technical Specifications to specify limiting conditions of operation and surveillance requirements for inservice code testing. The change also incorporates the term "Refueling Interval" in the definitions to specify the interval between designated ASME Code section XI surveillances and revises the definition of surveillance interval to allow the 25% tolerance to be applied to the refueling interval period of 24 months. In addition, by letters dated February 11, 1993 and March 29, 1993, changes were made to the Bases sections regarding core spray and LPCI system, and drywell temperature.

Date of issuance: September 28, 1993

Effective date: September 28, 1993

Amendment No.: 149

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 23, 1992 (57 FR 61108)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 28, 1992

Brief Description of amendments: The amendments change the technical specifications to (1) delete operational condition 5 from the applicability requirements of TS 3.1.5 regarding standby liquid control system (SLCS), (2) remove the associated action statement for operational condition 5, (3) delete both the operability and surveillance requirements in Table 3.3.2–1, Isolation Actuation Instrumentation, and Table 4.3.2–1, Isolation Actuation Instrumentation Surveillance Requirements that are associated with the SLCS initiation while in operational condition 3, and (4) make editorial corrections by adding the word "operational" before the words "conditions" and "condition", respectively, in the applicability and action statements of TS 3.1.5 to correspond with current TS terminology.

Date of issuance: September 23, 1993

Effective date: September 23, 1993

Amendment Nos.: 165 and 196

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 31, 1993 (58 FR 16852)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 22, 1993

Brief description of amendment: The amendment replaces Section 4.0.6 of the Haddam Neck Technical Specifications (TS), "Augmented Inservice Inspection Program" with a new TS Section 4.0.6, "Augmented Erosion/Corrosion Program."

Date of issuance: September 29, 1993

Effective date: September 29, 1993

Amendment No.: 165

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43923) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 29, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 29, 1992, as supplemented by letters dated February 19, 1993, June 10, 1993, and July 19, 1993.

Brief description of amendment: The amendment revises the Technical Specifications to amend the 480V Emergency Bus Undervoltage (Degraded Voltage) actuation setpoint.

Date of issuance: September 22, 1993

Effective date: As of the date of issuance to be implemented at the next outage of sufficient duration to effect the plant modification.

Amendment No.: 165

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55578)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 3, 1993.

Brief description of amendment: This amendment revises Tables 3.23–1 and 3.23–2 to include the fuel assemblies installed for Cycle 11 and to delete the reference of the number of fuel rods in the assemblies. The bases for several Technical Specification sections have been changed to reflect the updated revision of the analytical reports.

Date of issuance: September 21, 1993

Effective date: September 21, 1993

Amendment No.: 159

Facility Operating License No. DPR–20. Amendment revises the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 21, 1993.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

NRC Project Director: William M. Dean, Acting

Duke Power Company, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: February 25, 1993, as supplemented May 20 and August 31, 1993

Brief description of amendments: The amendments revise the Technical Specifications to change the frequency of reporting the quantity of each of the principal radionuclides released from the plant site to unrestricted areas in liquid and in gaseous effluents from semiannual to annual.

Date of issuance: September 24, 1993

Effective date: September 24, 1993

Amendment Nos.: 202, 202, and 199 for Units 1, 2, and 3, respectively.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 4, 1993 (58 FR 41504) The August 31, 1993, letter provided clarifying information that did not change the scope of NRC's proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: October 15, 1991, as supplemented January 27, February 25 and July 20, 1992.

Brief description of amendment: The amendment revises the Appendix A Technical Specification Limiting Condition for Operation (LCO) 3.1.3.4. On May 1, 1992, the Commission issued Amendment No. 46 which increased the allowable control rod drop time from 2.2 seconds to 2.7 seconds. That change authorized the use of the VANTAGE 5H fuel design in future operating cycles. In addition, certain Bases sections were changed to reflect the modified DNB design basis which used the new Westinghouse correlation, WRB–1, for predicting critical heat flux and the MINI Revised Thermal Design Procedure (MINI–RTDP).

The NRC staff had not completed its evaluation of the control room operator dose resulting from a projected 18% of the fuel rods being damaged (due to the increased control rod droptime) during a locked rotor accident. Since the staff had determined that the offsite consequences were acceptable and, a generally acceptable approach had been followed by Duquesne Light Company (DLC) in the calculation of control room operator doses, DLC's calculation of the control room operator dose was acceptable for cycle 4 only, and the amendment was modified acccordingly through the addition of a footnote to LCO 3.1.3.4.

For the NRC staff to complete its evaluation of the control room operator dose, additional meteorological information was requested. On July 20, 1992, DLC submitted the requested meteorological data to support the NRC staff's review of the control room operator doses for the locked rotor event.

This amendment specifically deletes the footnote previously added by Amendment No. 46 to LCO 3.1.8.4 prohibiting operation beyond cycle 4 with VANTAGE 5H fuel.

Date of issuance: September 28, 1993

Effective date: September 28, 1993

Amendment No: 57

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications and/or License.

Date of initial notice in Federal Register: January 22, 1992 (57 FR 2592)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: May 7, 1993

Brief description of amendment: The amendment changed Technical Specification 6.12.3.2 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 change also specified that the approved revision number of BAW–10179P–A will be identified in the Core Operating Limits Report for ANO–1.

Date of issuance: September 24, 1993

Effective date: September 24, 1993

Amendment No.: 169

Facility Operating License No. DPR–51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 21, 1993 (58 FR 39049)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 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: May 7, 1993

Brief description of amendment: The amendment reduced the maximum allowable linear power level-high trip setpoints associated with inoperable steam line safety valves listed in Technical Specification Table 3.7–1 and revised the associated Bases.

Date of issuance: September 27, 1993

Effective date: September 27, 1993

Amendment No.: 150

Facility Operating License No. NPF–6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34074)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 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. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: September 17, 1992, as supplemented January 22, February 26, and June 16, 1993.

Brief description of amendments: On May 21, 1991, the NRC published in the **Federal Register** (56 FR 23360) a revision to its standards for protection against radiation, including the requirements of 10 CFR Part 20, Sections 20.1001 through 20.2401. The amendments revise the TS in accordance with the new 10 CFR Part 20.

Date of issuance: September 24, 1993

Effective date: September 24, 1993

Amendment Nos.: 66 and 45

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47133) The January 22, February 26, and June 16, 1993, letters provided 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 September 24, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 1, 1993, as supplemented July 26 and August 27, 1993

Brief description of amendments: The amendments modify TS 3/4.3.1, "Reactor Trip System Instrumentation," TS 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and their associated Bases to relax surveillance test intervals and allowed outage times for engineered safety features actuation system instrumentation based on Westinghouse Topical Report WCAPO–10271 as previously approved by the NRC.

Date of issuance: September 30, 1993

Effective date: September 30, 1993

Amendment Nos.: 67 (Unit 1) and 46 (Unit 2)

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 9, 1993 (58 FR 42350) The August 27, 1993, letter corrected the hand-marked depiction of the proposed change to agree with the changes as described by the NRC in the **Federal Register** (58 FR 42350) on August 9, 1993. This correction, therefore, did not change the NRC's proposed finding of no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

GPU Nuclear Corporation, Docket No. 50–320, Three Mile Island Nuclear Station, Unit No. 2, (TMI–2), Dauphin County, Pennsylvania

Date of application for amendment: August 6, 1988

Brief description of amendment: This amendment changes the current TMI–2 operating license to a possession only license.

Date of issuance: September 14, 1993

Effective date: September 14, 1993

Amendment No.: 45

Facility Operating License No. DPR–13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 25, 1991 (56 FR 19128)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: August 31, 1990

Brief description of amendment: The amendment revises the Technical Specifications to provide increased operational flexibility for the drywell post-LOCA vacuum relief valves.

Date of issuance: September 20, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 84

Facility Operating License No. NPF–62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40469)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: April 7, 1993

Brief description of amendment: The amendment revises Technical Specification 3.1.5, "Standby Liquid Control System," to remove the requirement for the standby liquid control system to be operable in OPERATIONAL CONDITION 5 (Refueling) when any control rod is withdrawn.

Date of issuance: September 30, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 48

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25859)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 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.

North Atlantic Energy Service Corporation, Dockets Nos. 50–443, Seabrook Station, Unit 1, Seabrook, Massachusetts

Date of amendment request: August 26, 1993

Brief Description of amendment: The amendment revises Technical Specification 4.3.2.1, Table 4.3–2, Functional Unit 8.b by deleting the requirement to perform a CHANNEL CHECK at least once per 12 hours and by adding a new requirement to perform a TRIP ACTUATING DEVICE OPERATIONAL TEST (TADOT) at least once per 92 days. A note is added to clarify that setpoint verification is not be applicable to the TADOT.

Date of issuance: September 28, 1993

Effective date: September 28, 1993

Amendment No.: 25

Facility Operating License No. NPF–86. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes. (58 FR 47773, September 10, 1993) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 12, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 28, 1993.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, Docket No. 50–245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: May 25, 1993

Brief description of amendment: The amendment removes the operability and associated surveillance requirements for the main steam line radiation monitor (MSLRM) scram and Group I containment isolation functions. Justification for removal of the MSLRM trip function was described in Licensing Topical Report NEDO–31400, "Safety Evaluation For Eliminating the Boiling Water Reactor Main Steam Line Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor," which was approved by the NRC staff on May 15, 1991. The amendment also moves the requirements for MSLRM calibration to Surveillance Requirement 4.6.K.2 and makes some editorial changes to Limiting Condition for Operation Section 3.6.K.1.

Date of issuance: September 29, 1993

Effective date: September 29, 1993

Amendment No.: 64

Facility Operating License No. DPR–21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36441)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

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 application for amendments: December 24, 1992

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) 3/4.8.2, "Onsite Power Distribution," for Diablo Canyon Power Plant Unit Nos. 1 and 2 to remove references to the supplemental inverters and busses due to replacement of six 7.5 kVA (four vital and two supplemental vital) inverters with four kVA inverters.

Date of issuance: September 17, 1993

Effective date: September 17, 1993

Amendment Nos.: 83 and 82

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 17, 1993 (58 FR 8775)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: March 16, 1993

Brief description of amendment: The amendment, by Portland General Electric Company, PGE or the licensee, relocates those portions of the Trojan Technical Specifications (TS) that are related to the Trojan Fire Protection Program from the TS to Topical Report PGE–1012, "Trojan Nuclear Plant Fire Protection Plan." The amendment also revises the Fire Protection License Condition in Operating License NPF–1.

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment No.: 192

Facility Operating License No. NPF–1. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34088), and September 2, 1993 (58 FR 46665). The clarifying language added to the license condition did not alter the staff's initial determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

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 application for amendments: June 17, 1993

Brief description of amendments: These amendments revised the Updated Final Safety Analysis Report to address a potential single failure in the rod control system that is not within the current licensing basis of Salem, Units 1 and 2.

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment Nos. 144 and 122

Facility Operating License Nos. DPR–70 and DPR–75. These amendments revised the License.

Date of initial notice in **Federal Register:** June 29, 1993 (58 FR 34833)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

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: June 23, 1992, as supplemented November 13, 1992.

Brief Description of amendments: The amendments relocates the procedural details of the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) and relocates the procedural details for solid radioactive wastes to the Process Control Program (PCP). This request is in accordance with Generic Letter 89–01.

Date of issuance: September 20, 1993

Effective date: September 20, 1993

Amendment Nos.: 99 and 91

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45088) The November 13, 1992, letter provided clarifying information that did not change the initial determination of significant hazards consideration as published in the **Federal Register.**

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 20, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Houston–Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

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: August 24, 1992, as revised December 17, 1992, March 4, 1993, and April 29, 1993

Brief Description of amendments: The amendments change the Technical Specifications to implement the revised 10 CFR Part 20, Standards for Protection Against Radiation.

Date of issuance: September 21, 1993

Effective date: September 21, 1993

Amendment Nos.: 100 and 92

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45089) and August 18, 1993 (58 FR 43932)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 21, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

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, 1992, as supplemented June 29, 1993

Brief Description of amendments: The amendments (1) delete references to diesel generator 2C from TS 3/4.8.1.1 and TS 3/4.8.1.2, (2) delete 600 volt load centers J and H as listed in TS 3/4.8.2 and (3) 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 that 10 days. These changes allow modification of the emergency electrical power system to designate one of the existing emergency diesel generators as an alternate AC power source as defined in Regulatory Guide 1.155, "Station Blackout."

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment Nos.: 101 and 93

Facility Operating License Nos. NPF–2 and NPF–8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 21, 1993 (58 FR 39060)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: March, 25, 1992 supplemented January 29, 1993 and August 27, 1993 (TS 301)

Brief description of amendments: Consistent with the guidance and recommendations provided in NRC Generic Letter 89–01, these amendments incorporate programmatic controls for radiological effluents and radiological environmental monitoring in the Administrative Controls section of the plant Technical Specifications (TS) and transfer the procedural details of the Radiological Effluent Technical Specifications (RETS) from the TS to the Offsite Dose Calculation Manual (ODCM) and to the Process Control Program (PCP) as appropriate. Additionally these amendments delete a redundant TS requirement pertaining to the Off-Gas system hydrogen monitors.

Date of issuance: September 22, 1993

Effective date: September 22, 1993

Amendment Nos.: 199—Unit 1, 216—Unit 2, and 172—Unit 3

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** 57 FR 22268 dated May 27, 1992 and 58 FR 36447 dated July 7, 1993.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1993. No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Virginia Electric and Power Company, et al., Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: April 27, 1990, as supplemented December 21, 1990 and March 29, 1993

Brief description of amendment: These amendments revise the NA–1&2 TS 3/4.7.9 by removing the automatic isolation requirement for the Reactor Heat Removal (RHR) suction valves. In addition, a requirement is added to verify the RHR suction valves are closed and deenergized prior to exceeding 500 pounds per square inch gauge in the Reactor Coolant System.

Date of issuance: September 23, 1993

Effective date: September 23, 1993

Amendment No.: 175, 156

Facility Operating License No. NPF–7: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30316)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498

Dated at Rockville, Maryland, this 5th day of October 1993.

For the Nuclear Regulatory Commission

Jose A. Calvo,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation

[FR Doc. 93–24968 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–F

[Docket No. 50–192]

Environmental Assessment and Finding of No Significant Impact Regarding Termination of Facility License No. R–92, University of Texas at Austin TRIGA Mark I Research Reactor

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an order terminating Facility License No. R–92 for the University of Texas at Austin (UT or the licensee) research reactor located in Austin, Texas, in accordance with the application dated May 3, 1985, as supplemented on December 17, 1992, and March 22 and May 3, 1993.

Environmental Assessment

Identification of Proposed Action

By application dated May 3, 1985, as supplemented on December 2, 1985, the licensee requested authorization to dismantle the UT TRIGA Mark I research reactor and dispose of its component parts in accordance with the proposed decommissioning plan. Following an "Order Authorizing Dismantling of Facility and Disposition of Component Parts," dated March 9, 1987 (52 FR 8543), the licensee completed the dismantlement and submitted a final survey report dated December 17, 1992, as supplemented on March 22 and May 3, 1993. Representatives of the Oak Ridge Institute for Science and Education (ORISE), under contract to NRC, conducted a survey of the facility April 5 through 7 and June 1, 1993. The survey is documented in an ORISE report, "Confirmatory Survey of the University of Texas TRIGA Reactor, Austin, Texas," dated July 1993. NRC Region IV, in a memorandum dated July 28, 1993, found that the ORISE report findings support the data developed in the licensee final survey report.

The Need for Proposed Action

In order to release the facility for unrestricted access and use, Facility License No. R–92 must be terminated.

Environmental Impact of License Termination

The licensee indicates that the residual contamination and dose exposures comply with the criteria of Regulatory Guide 1.86, Table 1, which establishes acceptable residual surface contamination levels, and the exposure limit, established by the NRC staff, of less than 5 micro R/hr above background at 1 meter. These measurements have been verified by the NRC. The NRC finds that, because these criteria have been met, there is no significant impact on the environment and the facility can be released for unrestricted use.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts and would deny release of the site for unrestricted use and require continuance of the facility license. The environmental impacts of the proposed action and the alternative action are similar. Because the reactor and component parts have been dismantled and disposed of in accordance with NRC regulations and guidelines, there is no alternative to termination of Facility License No. R–92.

Agencies and Persons Consulted

Personnel from the Oak Ridge Institute of Science and Education (an NRC contractor) assisted Region IV in the conduct of the Termination Survey for the UT TRIGA Mark I Research Reactor. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The NRC has determined not to prepare an environmental impact statement for the proposed action. On the basis of the foregoing environmental assessment, the NRC has concluded that the issuance of the order will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for termination of Facility License No. R–92, dated May 3, 1985, as supplemented on December 17, 1992, and March 22 and May 3, 1993. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of October 1993.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–25048 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on October 26–27, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, October 26, 1993—8:30 a.m. until the conclusion of business. Wednesday, October 27, 1993—8:30 a.m. until the conclusion of business.*

The Subcommittee will begin its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GE) Advanced Boiling Water Reactor (ABWR) design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this review. Representatives of GE and its consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named

individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 5, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–25047 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–M

Public Workshop: Topics Related to Certification of Evolutionary Light Water Reactor Designs

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing a public workshop concerning issues related to the form and content of the rules that would provide design certification for evolutionary light water reactor designs. The purpose of the workshop is to inform the public of the NRC's current proposals for approving standard reactor designs by rulemaking, answer any questions posed by the meeting participants, and to discuss any recommendations or concerns raised. This action is being taken to provide the opportunity for early public participation in the development of design certification rules. In addition to open public participation in this workshop, the NRC is inviting known interested parties to attend. The meeting minutes will be transcribed by a court recorder.

DATES: The workshop will be held on Tuesday, November 23, 1993, from 8:30 am to 5 pm.

ADDRESSES: The workshop will be held at the Ramada Inn, 8400 Wisconsin Ave., Bethesda, Maryland, (301) 654–1000.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3634 or Jerry N. Wilson, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–3145.

SUPPLEMENTARY INFORMATION: The NRC's regulations in 10 CFR part 52, subpart B - Standard Design Certifications, provide the requirements applicable to issuing a design certification for a standard nuclear power plant design. The NRC is planning to promulgate several rules which will provide for certification of each evolutionary reactor design which it reviews and approves. These rules would be set forth in separate appendices to 10 CFR part 52. The NRC is seeking early public participation in the development of the form and content of these design certification rules. In order to explain the proposed approach and to facilitate public discussion of related issues, the NRC is holding a public workshop on this topic. In addition, the NRC is preparing an Advanced Notice of Proposed Rulemaking (ANPR) soliciting written public comments on its approach to these rulemakings. The ANPR is expected to be published prior to the workshop.

Since the issuance of 10 CFR part 52 in 1989, the NRC staff has been developing guidance for implementing the requirements for design certification. The NRC staff proposals for implementing these requirements for design certification have been set forth in various papers to the Commission (SECYs). The Commission's response to these SECY papers has been provided in the respective Staff Requirements Memoranda (SRMs). The ANPR may not be published far enough in advance of the workshop to provide all interested parties time for a thorough review. However, the SECY papers and SRMs listed below provide sufficiently comprehensive discussion of the issues to permit meaningful public discussion at the meeting.

1. SECY–90–377, November 8, 1990, "Requirements for Design Certification under 10 CFR Part 52."

2. Memorandum from Samuel J. Chilk, to James M. Taylor, February 15, 1991, "SECY–90–377 - Requirements for Design Certification under 10 CFR Part 52."

3. SECY–92–287, August 18, 1992, "Form and Content for a Design Certification Rule."

4. Memorandum from Samuel J. Chilk, to James M. Taylor, September 30, 1992, "SECY–92–287 - Form and Content for a Design Certification Rule."

5. SECY–92–287A, March 26, 1993, "Form and Content for a Design Certification Rule."

6. Memorandum from Samuel J. Chilk, to James M. Taylor, June 23, 1993, "SECY–92–287/287A - Form and Content for a Design Certification Rule."

7. SECY–93–087, April 2, 1993, "Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor Designs."

8. Memorandum from Samuel J. Chilk, to James M. Taylor, July 21, 1993, "SECY–93–087 - Policy, Technical, and Licensing Issues Pertaining to Evolutionary and Advanced Light-Water Reactor Designs." and

9. Letter from Dennis M. Crutchfield, Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission to Patrick W. Marriott, Manager, Licensing & Consulting Services, GE Nuclear Energy, August 26, 1993, "Guidance on the Form and Content of a Design Control Document."

Persons wishing to examine or copy the documents listed above can do so at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, between the hours of 7:45 a.m. and 5:15 p.m. on Federal workdays.

Requests for copies may also be sent to Harry S. Tovmassian, Office of Nuclear Regulatory Research, Washington, DC 20555.

The topics to be discussed at the workshop relate to the form and content of the rules which would certify evolutionary light water reactor designs, as required by 10 CFR 52.54. The NRC staff's proposals on the form and content of a Design Certification Rule are provided in SECY–92–287 and –287A. The Commission's guidance is set forth in the respective SRMs listed above. These documents discuss issues pertaining to a "two-tiered" design certification rule structure including the process and standards for changing Tier 2 information. Members of the public are encouraged to ask questions on the staff's proposals or make their own proposal on the best way to implement design certification rulemaking in accordance with 10 CFR 52.54.

Specific Topics

The proceedings of this meeting will address all pertinent questions with respect to the form and content of design certification rules including the staff's proposed approach. The NRC is particularly interested in the public views concerning a number of topics and invites the public to address them at the workshop. These topics are taken from the above referenced documents:

1. The acceptability of a two-tiered design certification rule structure;

2. The acceptability of the process and standards for changing Tier 2 information;

3. The acceptability of a Tier 2 exemption;

4. The acceptability of using a change process, similar to the one in 10 CFR 50.59 applicable to operating reactors ("§ 50.59-like"), prior to the issuance of a combined license that references a certified design;

5. The acceptability of identifying selected technical positions from the Safety Evaluation Report as

"unreviewed safety questions" that cannot be changed under a "§ 50.59-like" change process;

6. Need for modifications to § 52.63(b)(2) if the two-tiered structure for the design certification rule is approved;

7. Whether the Commission should either incorporate or identify the information in Tier 1 or Tier 2 or both in the combined license;

8. The acceptability of using design-specific rulemakings rather than generic rulemaking for the technical issues whose resolution exceeds current requirements. These "applicable regulations" will become part of the Commission's baseline of regulations for the specific certified design that are applicable and in effect at the time the certification is issued; and

9. The appropriate form and content of a design control document.

Other questions on the proposed approach to the form and content for a design certification rule will be entertained if time permits.

Dated at Rockville, Maryland, this 6th day of October 1993.

For the Nuclear Regulatory Commission.

Bill M. Morris,

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

[FR Doc. 93–25049 Filed 10–12–93; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Reviews DOE Yucca Mountain Project Environmental Activities

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board's panel on the Environment & Public Health will hold a meeting on November 22, 1993, in Las Vegas, Nevada, to study the Department of Energy's (DOE) environmental activities at Yucca Mountain. A site at Yucca Mountain currently is being characterized by the DOE for its suitability as the possible location of a permanent repository for civilian spent fuel and defense high-level waste.

The meeting will focus on studies of terrestrial ecosystems and will provide an overview of Yucca Mountain Project environmental activities for new panel members and consultants. A second purpose of the meeting is to review the results of environmental monitoring activities obtained during the past few years, including statistical analyses of monitoring data. Members of the panel hope to gain insight on the decision-making process used to evaluate the environmental significance of monitoring results.

The meeting, which will begin at 8:30 a.m. and conclude by 5:30 p.m., is open to the public and will be held in the Plaza-Suite Hotel, 4255 South Paradise Road, Las Vegas, Nevada 89109; telephone (702) 369–4400. For further information, contact Frank Randall, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; telephone (703) 235–4473; FAX (703) 235–4495.

Dated: October 6, 1993.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 93–25046 Filed 10–12–93; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32999; File No. SR–CBOE–93–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the Chicago Board Options Exchange, Inc. Relating to Fees Due for Post-Trade Date Submission of Trade Information

October 1, 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 September 2, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as describe in Items I and II below, which Items have been prepared by the CBOE. The CBOE subsequently filed one amendment to the proposal.[1] 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 establish a fee to be paid by members who submit trade information after the trade date for more than a prescribed percentage of transactions by any month. 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 proposal is to establish a fee to be paid by members who, for more than a stated percentage of transactions during any month, submit trade information under Exchange Rule 6.51 after the date on which the trade is executed. Specifically, any Exchange member who fails for more than a stated monthly percentage of transactions to submit required transaction information would incur a transaction fee of $3.00 for each such trade. The fee is intended to help offset the carrying costs to members resulting from the costs of processing these post-trade date submissions, which commonly are referred to as "as of adds."[2] Pursuant to CBOE Rule 2.22, the Exchange may impose fees on members for the use of Exchange Facilities or for any services or privileges granted by the Exchange. In this case, the fees are to be imposed for use of the Exchange's overnight and next-day trade match processing services. Because the Exchange expects the number of as of adds to decrease over time as a result of these fees, the maximum allowable percentage of as of adds per month is structured to decrease periodically. Member firms would be subject to a different maximum allowable percentage of as of adds per

[1] On September 30, 1993, the CBOE filed Amendment No. 1 to the proposal requesting that the proposal be approved on a six-month pilot basis until March 31, 1994. *See* Letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to Richard Zack, Branch Chief, Office of Options, Division of Market Regulation, Commission, dated September 30, 1993 ("Amendment No. 1").

[2] The Exchange has represented that in aggregate, unresolved trades carried overnight impose significant monthly carrying costs on the members that are parties to such trades. The Exchange estimates that each unresolved trade carried overnight costs each member that is a party to the trade $2.50 in carry costs, and that these costs total approximately $65,000 per month. See Amendment No. 1, *supra* note 1.

month than individual members.[3] In no event will the maximum allowable percentage of as of adds for any member exceed the baseline number initially established for that member.

Members that incur fees pursuant to this rule may submit a request for verification to the Exchange pursuant to Part A of Chapter XIX of the CBOE Rules. In addition, members may appeal these fees pursuant to Part B of Chapter XIX.

The proposed rule change also contains several editorial changes to CBOE Rule 2.25, a rule that relates to collection procedures for fees incurred under the Trade Match Delayed Submission Fee Rules. Those editorial changes are intended to conform the terms of Exchange Rule 2.25 to those contained in the proposed rule.

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 it is designed to provide for the equitable allocation of reasonable dues, fees and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a 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 respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[4] Specifically, the Commission finds that the CBOE proposal to impose fees on members who submit trade information after the trade date for more than a prescribed percentage of transactions in any month is likely to provide for the equitable allocation of fees among Exchange members and offset the carrying costs incurred by Exchange members as a result of these post-trade date submissions.

The Commission also believes that the proposal will make trade comparisons on the CBOE more efficient in terms of the time and expense involved in trade processing. Intra-day trade matching reduces Exchange member expenses by decreasing the number of personnel that need to be available after the trading day has ended to match uncompared trades. The proposal should significantly reduce the number of as of adds by providing an economic incentive to resolve unmatched trades during the trading day when the personnel that are responsible for the trades are still present.

Additionally, the Commission believes the proposal will reduce the risk exposure to investors and Exchange member firms. Uncompared trades are subject to market price volatility and could cause a loss to a member firm or its customer in the event of a default or some other unexpected event occurring before an as of add is resolved. The proposal should act to reduce the number of as of adds and thus reduce this risk.

Finally, the proposal does not raise any due process concerns since the proposal provides that all members who incur fees pursuant to this rule may submit a request for verification pursuant to Part A of Chapter XIX of the CBOE Rules, and may appeal those fees pursuant to Part B of Chapter XIX of the CBOE Rules.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the Exchange to begin imposing the proposed fees on October 1, 1993. The Exchange has represented significant monthly carrying costs are incurred by members as a direct result of as of adds,[5] which must ultimately be borne by all market participants. Accelerated approval will allow the Exchange to implement the proposal immediately in an effort to minimize these costs. Additionally, the Commission does not believe that the proposal raises any regulatory concerns since the Exchange's existing rules and fees for late submissions of trade information have been in place for an extended period[6] and to date, have not posed any discernible problems. Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

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–93–34 and should be submitted by November 3, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal relating to fees due for post-trade date submission of trade information is consistent with the Act, and in particular, Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7] that the proposed rule change (SR–CBOE–93–34) is hereby approved on a pilot basis until March 31, 1994.

[3] For individual members (member firms), (1) from October 1, 1993 through March 31, 1994, the maximum monthly as of add rate would be 2.5% (1.3%) of a member's monthly trades; (2) from April 1, 1994 through September 30, 1994, the maximum monthly as of add rate would be the lesser of 2.5 (1.3) times the Exchange-wide as of add rate for March 1994 or 2.5% (1.3%) of a member's monthly trades; and, (3) after September 30, 1994, the maximum monthly as of add rate would be the lesser of 2.5 (1.3) times the Exchange-wide as of add rate for September 1994 or 2.5% (1.3%) of a member's monthly trades.

[4] 15 U.S.C. 78f(b)(5) (1988).

[5] See Amendment No. 1, *Supra* note 1.

[6] See Securities Exchange Act Release No. 28807 (January 22, 1991), 56 FR 3127 (granting temporary approval of trade match fees until July 22, 1991); Securities Exchange Act Release No. 29341 (June 19, 1991), 56 FR 29293 (granting extension of temporary approval of trade match fees until January 22, 1992); Securities Exchange Act Release No. 30000 (November 26, 1991), 56 FR 63531) (granting permanent approval of trade match rules); and, Securities Exchange Act Release No. 30001 (November 26, 1991), 56 FR 63529 (granting permanent approval of trade match rules).

[7] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25022 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33013; File No. SR–CBOE–93–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Stopping of Option Orders by Market-Makers and Designated Primary Market-Makers

October 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 24, 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 add a rule ("Rule") providing the terms and conditions for the granting of a "stop" order by market-makers and designated primary market-makers ("DPM") and accepting a "stop" order by floor brokers. The text of the proposed rule change is available at the Office of the Secretary, the 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.

[8] 17 CFR 200.30–3(a)(12) (1992).

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange states that the purpose of the Rule is to implement a comprehensive method for executing "stopped" transactions on the Exchange, comparable to stopping rules that have been in operation at other exchanges for many years. The proposed rule change provides that an Exchange market-maker or DPM is authorized, though not required, to grant a stop on an option transaction and that a floor broker is authorized, but is not required, to accept a stop. In addition, the proposed rule change sets forth the conditions which attach to a market-maker's or DPM's granting of a stop.

A "stop" is defined as a guarantee that an option order will be executed at the stop price or better. The Exchange believes that the practice of stopping an option order provides many benefits for marketplace participants, market-makers or DPMs, floor brokers, and customers alike. The Exchange also believes a stop benefits the customer by providing an opportunity for the floor broker to try to obtain a better price for that customer without risk. According to the Exchange, a stop provides one means whereby a floor broker may satisfy the "due diligence" standard which he or she is required to meet under Exchange rules and enables the floor broker to lock in a desirable price while attempting to better that price. Additionally, the Exchange believes that a stop also provides the market-maker or DPM with an opportunity to compete for order flow by better meeting the needs of floor brokers, and it provides additional price discovery for the trading crowd.

The conditions under which an Exchange market-maker or DPM may grant a stop and a floor broker may accept a stop are set forth in paragraph (b) of the Rule. The first condition requires a market-maker or DPM granting a stop on a straight order or on only the option portion of a buy-write to make the trading crowd and the Order Book Official aware of the terms, price, and size of the stop. This is intended to provide increased trading opportunities to the trading crowd and to provide objectivity and credibility to the resulting fills obtained for customers by floor brokers and/or market-makers. The second condition requires that all stopped orders be time-stamped at the time that the stop is granted, which establishes an objective method for determining priority within the trading crowd and assists other surveillance functions by providing a timed audit trail. The third condition requires a market-maker or DPM to be prepared to execute, if requested, one or more additional orders up to, but not in total to exceed in aggregate, the total quantity of contracts executed in the original stopped transaction at the same stop price. This is intended to provide a measure of fairness to floor transactions by giving more than one crowd participant the opportunity to receive the guaranteed or stopped price. The fourth condition is that a floor broker must elect to executive the stopped order at the stop price and size at the time a transaction occurs in the crowd at the stop price, or else the floor broker must release the market-maker or DPM from his or her guarantee. Finally, the Rule describes how a floor broker must bid or offer to improve on the stop.[1] These latter two conditions are intended to specify the scope of the risks undertaken by the market-maker or DPM granting the stop and to provide for the termination of the guarantee made by the market-maker or DPM.

Paragraph (c) of the Rule establishes priority for "stopped" orders over new crowd orders, excluding the public limit order book, when the stop order is properly granted, accepted, and time-stamped by the floor broker at the time the stop is granted and accepted.

Paragraph (d) of the Rule also requires that notice be given to a customer by the floor broker or member organization within a reasonably practicable time after that customer's order has been stopped. This notice requirement is designed to ensure that, following the execution of a stopped order, the customer will be notified. According to the Exchange, the granting of the stop actually gives the customer the best price available either by virtue of the stop or by the ability of the floor broker to improve on the price.

Paragraph (e) of the Rule details the reporting requirements applicable to the execution of stopped orders on the tape and on cards used for reporting Exchange transactions.

Paragraph (f) of the Rules addresses the effect of a trading halt on the priority and pricing of a stopped order. This aspect of the Rule, which the Exchange asserts is substantially the same as an American Stock Exchange,

[1] Proposed Exchange Rule 8.17(b)(5) states "In improving on the stop price once a floor broker has accepted a stop, a floor broker must bid no more than one fractional trading increment less than the stop and must offer no more than one fractional trading increment greater than the stop. A fractional trading increment is the minimum fractional change allowed for bids and offers consistent with [Exchange] Rule 6.42."

Inc. provision covering the same subject, establishes procedures for the benefit of customers by requiring the floor broker to use due diligence to obtain any better price at which an option might re-open after a halt, while maintaining priority at the stop price if the re-opening is at that price or an inferior price.

Finally, paragraph (g) of the Rule explicitly states that the market-maker granting the stop is held to that guarantee by placing the liability for correcting an erroneous or inaccurate price on the market-maker or DPM that granted the stop.

The Exchange 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) in particular, in that it is designed to promote just and equitable principles of trade and to enhance and protect investors and the public interest by promoting due diligence on the part of floor brokers while enabling market-makers and DPMs to compete for orders by meeting the needs of floor brokers without risk to the customer, and by encouraging additional price discovery for the trading crowd.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate 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, Washington, 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–93–30 and should be submitted by November 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25023 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33015; File No. SR–CBOE–92–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Short Sales of SuperShares

October 5, 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 November 24, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 amend Exchange Rule 30.20, relating to short sales, to reflect an exemption granted by the Commission pursuant to Rule 10a–1 under the Act ("Rule 10a–1")[1] for SuperShares.[2] 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 amend CBOE Rule 30.20 to provide that securities exempted from the "tick test" requirements of Rule 10a–1 will likewise be exempt from the parallel provisions of rule 30.20. Paragraph (b) of CBOE Rule 30.20,which applies to the trading of stock, warrants, unit investment trust ("UIT") interests, and other securities subject to Chapter XXX of the rules of the Exchange, including SuperShares, imposes a tick test requirement on short sales of such securities comparable to the requirement imposed by paragraphs (a) and (b) of rule 10a–1.[3] By letter dated June 24, 1992, in response to a request previously submitted by CBOE, the Commission exempted short sales of SuperShares from the tick test requirement of paragraph (a) of rule 10a–1, subject to the condition that any such transactions must not be made for the purpose of creating actual or apparent active trading in, or raising or otherwise affecting the price of, SuperShares or any related security.[4] In

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[2] 17 CFR 200.30–3(a)(12) (1993).

[1] 17 CFR 240.10a–1 (1991).

[2] SuperShares are securities issued by unit investment trusts sponsored by SuperShare Service Corporation, a majority owned subsidiary of Leland O'Brien Rubinstein Associates Incorporated. *See* Securities Exchange Act Release No. 30393 (February 21, 1992), 57 FR 7415.

[3] The tick test provides that members shall not effect a short sale of any security unless such sales occurs on a plus tick (*i.e.*, at a price above the price at which the immediately preceding sale was effected), or a zero-plus tick (*i.e.*, at the last sale price if it was higher than the last different price). *See* CBOE Rule 30.20(b).

[4] *See* CBOE, SEC No-Action Letter, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶76,283, at 77,071 (June 24, 1992) ("SuperShares No-Action Letter").

order to give effect to this exemption, it is necessary that short sales of SuperShares also be exempt from the tick requirements of paragraph (b) of CBOE Rule 30.20, subject to the same condition. The Exchange believes that the proposed rule change accomplishes this purpose.

The CBOE also proposes to add Commentary .03 to Exchange Rule 30.20. Commentary .03 would (1) describe the exemption for SuperShares from Rule 10a–1 contained in the SuperShares No-Action Letter; and (2) state that so long as that exemption remains in force, short sales of SuperShares would be exempt from the tick requirements of paragraph (b) of CBOE rule 30.20.

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 it will permit trading in SuperShares to take place on the Exchange pursuant to rules designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a 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 respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5).[6] Specifically, the Commission finds that the CBOE proposal to amend CBOE Rule 30.20 to exempt short sales of SuperShares from the application of paragraph (a) of Rule 10a–1, subject to the condition that any such transactions must not be made for the purpose of creating actual or apparent active trading in, or raising or otherwise affecting the price of, SuperShares or any related security, does not raise any regulatory concerns since the Commission has previously exempted such short sales.[7] The Commission notes that SuperShares will be exempt from the tick test requirements of paragraph (b) of CBOE Rule 30.20 so long as the Commission's exemption remains in force. Accordingly, the Commission believes it is appropriate for the CBOE to amend Rule 30.20 to exempt SuperShares from the application of paragraph (a) of Rule 10a–1.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposal accurately codifies the position previously taken by the Commission in the SuperShares No-Action Letter and because no regulatory problems have arisen since the date of that no-action letter. Accordingly, the Commission believes it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

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–92–38 and should be submitted by November 3, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal exempting short sales of SuperShares from Rule 10a–1 is consistent with the Act, and in particular, Section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[8] that the proposed rule change (SR–CBOE–92–38) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25024 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(2) (1988).

[6] 15 U.S.C. 78s(b)(5) (1988).

[7] See SuperShares No-Action Letter, *supra* note 4.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33010; File No. SR–DTC–93–7]

Self-Regulatory Organization; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to an Enhanced Institutional Delivery System

October 4, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 7, 1993, The Depository Trust Company ("DTC") 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 primarily by DTC. 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 proposed rule change will enhance DTC's Institutional Delivery ("ID") system. The enhanced ID system will have interactive options and other new features and will also unify the existing ID and International ID systems.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1) (1988).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance the ID system by including interactive options and other new features in order to improve post-trade data flow and reduce costs to participants and other ID system users. All new features will be optional. The principal new features of the enhanced ID system, with the planned implementation period for each feature indicated in parenthesis, are as follows:[2]

1. *Standing Instructions Database* (late 1993). The Standing Instructions Database ("SID") will be a repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. The information will include items such as interested parties, the agent for the customer, and the agent's internal account number for the customer. When entering trade data into the ID system, a broker-dealer can simply refer to the account designations in the SID, and the ID system will automatically add the necessary associated detail (such as customer name, agent, and interested parties) to the confirmation. The SID will eliminate the need for the broker-dealer to maintain all such information in its internal records and to provide all such information each time that it enters trade data into the ID system.

2. *Electronic Mail Features* (late 1993 through early 1994). These features will enable ID system users to send and receive Notification of Order Execution ("NOE"), Institution Instructions, and Institution Request for Cancellation/Correction. An NOE can be sent by a broker-dealer to communicate the details of an order execution to an institution. If the institution accepts the NOE, the institution can send the broker-dealer Institution Instructions containing information, such as allocations of block trades, which is needed by the broker-dealer to enter trade data into the ID system for preparation of confirmations. The institution can send the broker-dealer an Institution Request for Cancellation/Correction when the institution disagrees with a confirmation that the Institution has received through the ID system. Currently, broker-dealers and institutions make telephone calls or send facsimile transmissions to communicate the information which will be sent through these electronic mail features.

3. *Interactive ID* (early 1994). In addition to using the ID system in the current batch mode, ID system users will be able to use the system interactively with the capability of accomplishing all ID system processing within as little as a single business day.

4. *Matching* (mid 1994). As an alternative to the current confirmation and affirmation processing in the ID system, DTC will offer a matching option. The enhanced ID system will match trade data received from the broker-dealer with Institution Instructions received from the institution. The results of the matching will be reported through the distribution of various output reports to the broker-dealer, the agent, and the institution.

5. *Authorization/Exception Processing and T+5 Reporting* (mid 1994). Because most unaffirmed trades of DTC-eligible securities eventually result in book-entry deliveries affected by deliver orders, the enhanced ID system will enable the delivering parties to ID system trades to authorize automated settlement of unaffirmed trades. In addition, delivering parties will be allowed to authorize settlements of trades on the settlement dates and later. This feature will enable delivering parties to take advantage of the efficiencies of preauthorized automated settlement.

The proposed rule change is consistent with the requirements of the Act, Section 17 of the Act, and the rules and regulations thereunder applicable to DTC because the proposed rule change will further automate the process by which securities transactions are cleared and settled. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible because the proposed rule change enhances DTC's existing ID system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In 1990, at the request of the Group of Thirty U.S. Working Committee's T+3 Brokers and Banks Subgroup, DTC analyzed ID system activity. Based on that analysis and other information, the Subgroup formulated a proposal for an enhanced ID system. In November 1990, the proposal was distributed for comment by the Group of Thirty Working Committee. In February 1991, an ID Focus Committee was established to review the November 1990 proposal. The Focus Committee consisted of broker-dealers, banks, and institutional users of the ID system affiliated with the Securities Operations Division of the Securities Industry Association, the Bank Depository User Group, the New York Clearing House Association, the Investment Company Institute, and the Investment Counsel Association of America. The Focus Committee endorsed the Subgroup's proposal in May 1991. Subsequent study by DTC suggested that participants and other ID users would benefit from an even further enhanced ID system.

In January 1992, DTC published a memorandum entitled "An Interactive Option for the Institutional Delivery System." That memorandum proposed a new ID system with interactive options which will also unify the existing ID and International ID systems. In May 1992, a second ID Focus Committee was established to determine the specifications of the new ID system. The second ID Focus Committee consisted of representatives of the same user community as the first Focus Committee as well as a representative of the Industry Standardization for Institutional Trade Communications Group. The second ID Focus Committee completed its review of the system specifications in October 1992. The proposed rule change reflects the deliberations of the second ID Focus Committee as well as information obtained by DTC subsequently from various ID users.

Written comments from DTC Participants or others have not been received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[2] For each principle new feature of the interactive ID system, DTC has agreed to submit a Section 19(b)(2) rule filing setting forth the finalized rules, procedures, etc. Each such rule filing will be submitted for Commission approval prior to implementation of the subject principle new feature.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–93–07 and should be submitted November 3, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25090 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33001; File No. SR–PHLX–93–06]

Self-Regulatory Organizations; Filing of Proposed Rule Change and Amendment No. 1 by the Philadelphia Exchange, Inc., Relating to the Listing of $25 Strike Price Intervals for Options on the Over-the-Counter Index and the Value Line Index

October 1, 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 March 11, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.[1] 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

Currently, the PHLX lists options on the National Over-the-Counter Index ("XOC") and the Value Line Index ("VLE," and, with the XOC, the "Indexes") at strike price intervals of $5.00 surrounding the current value of the Indexes.[2] The PHLX proposes to amend its rules by adding Commentary .02 to PHLX Rule 1101A, "Terms of Option Contracts," which will allow the Exchange to list strike prices in the far-term series (nine months to expiration) of the Indexes at $25.00 intervals unless there is demonstrated customer interest in $5.00 strike price intervals. For the purposes of Commentary .02, the PHLX defines "Customer interest" to include "institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a ROT with respect to trading for the ROT's own account."[3] Under the proposal, the PHLX will list strike prices in the far-term series of the XOC and the VLE at intervals of $25.00 until there are less than six months to expiration, when the Exchange will list the intervening strike prices at $5.00 intervals.

The proposed rule change is available at the Office of the Secretary, PHLX, 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) 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

Currently, the PHLX lists options on the XOC and the VLE at strike price intervals of $5.00 surrounding the current value of the Indexes. The PHLX proposes to amend its rules to allow the Exchange to list strike prices in the far-term series of the XOC and the VLE at intervals of $25.00. Specifically, the Exchange proposes to add Commentary .02 to PHLX Rule 1101A, which will state that exercise prices for index options shall be $5.00, except that the exercise prices for the far-term series of XOC and VLE options shall be $25.00 unless there is demonstrated customer interest[4] in $5.00 intervals. The PHLX states that its definition of "customer interest" is designed to ensure that only legitimate customer requests lead to the listing of additional $5.00 strike prices in the far-term series of the Indexes.[5] The PHLX states, in addition, that the proposal is intended to reduce the number of strikes listed in inactively traded series, and that the Exchange's proposal to list additional strikes in far-term series only in response to bona fide customer requests is designed to help the Exchange to achieve that purpose and is consistent with the rules of other options exchanges, including American Stock Exchange, Inc. Rule 903C(b), Commentary .03.[6]

Quarterly, the PHLX lists a far-term series for XOC and VLE options to trade for nine months. Under the proposed rule change, the far-term series of XOC and VLE options will be listed with $25.00 strike price intervals until there are less than six months remaining until expiration, when the intervening strike prices will be listed at $5.00 intervals.

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[3] 17 CFR 200.30–3(a)(12) (1992).

[1] The PHLX amended its proposal to add new Commentary .02 to Exchange Rule 1101A, which provides, in part, that exercise prices in the far-term series of options on the National Over-the-Counter Index ("XOC") and on the Value Line Index ("VLE") shall be $25.00, unless demonstrated customer interest exists at $5.00 intervals. For the purposes of proposed Commentary the PHLX defines "demonstrated customer interest" to include "institutional (firm), corporate or customer interest expressed directly to the Exchange or through the customer's floor brokerage unit, but not interest expressed by a Registered Options Trader ("ROT") with respect to trading for the ROT's own account." See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated April 15, 1993 ("Amendment No. 1"), and Telephone Conversation between Edith Hallahan, Attorney, Market Surveillance, PHLX, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on August 19, 1993 (confirming that the proposed Commentary will be numbered .02 rather than .01). In addition, the PHLX indicated that the Exchange's Market Surveillance Department will issue a memorandum to the trading floor three weeks prior to implementing the proposal. See Letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Richard Zack, Branch Chief, Options Regulation, Division, Commission, dated September 29, 1993 ("September 29 Letter").

[2] See Securities Exchange Act Release Nos. 21576 (January 18, 1985), 50 FR 3445, and 22044 (May 17, 1985), 50 FR 21532 (notice and order approving XOC options); and 21392 (October 10, 1984), 49 FR 40987, and 21513 (November 21, 1984), 49 FR 46857 (notice and order approving VLE options).

[3] See Amendment No. 1, *supra* note 1.

[4] See Amendment No. 1, supra note 1, for the PHLX's definition of "customer interest."

[5] See Amendment No. 1, supra note 1.

[6] See September 29 Letter, supra note 1.

For example, after the March expiration of XOC and VLE options, the PHLX would list the December series for both options at $25.00 strike price intervals. In addition, the Exchange proposes to list additional strike prices in the far-term series of XOC and VLE options in response to a customer request at any time.

In response to member requests, the Exchange reviewed trading date and found that limited volume occurs in the far-term series of the Indexes.[7] The Exchange notes that with the value of the Indexes ranging from $300 to $600, a $25.00 interval will still preserve key trading strategies because $25.00 often represents a 2½ point movement in the Indexes, which is similar to a stock trading at $25.00 or less whose option is traded at 2½ point strike price intervals.

In addition, the Exchange believes that the $25.00 strike price intervals should alleviate the burden of excessive strike prices in inactive series. For example, after the December 1992 expiration, nine strike prices were listed in the September series of both Indexes.[8] The PHLX notes that all of these strike prices must be displayed on screens on the trading floor, disseminated to outside vendors and monitored by the Exchange's specialists. The Exchange states that the bids and offers are often substantially similar for many of the far-term strike prices and series because the volatility levels do not differ significantly. The Exchange believes that the proliferation of strike prices in far-term series does not provide significant market opportunities that would be lost if fewer strike prices were listed.

In addition, the PHLX notes that the elimination of excessive strike prices should help to reduce instances of wrap-around.[9] The PHLX states that wrap-arounds and the use of new symbols create an operational burden for the Exchange and its member firms and may result in confusion to investors seeking to ascertain options markets from display screens.

The PHLX believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and in particular with section 6(b)(5). Specifically, the PHLX believes that the proposal to list strike prices at $25.00 intervals in the far-term series of the Indexes should alleviate the burdens of excessive strike prices, which, in turn, should promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate 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 either solicited or 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 reason 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 at 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 above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-25025 Filed 10-12-93; 8:45 am]

BILLING CODE 8010-01-M

[7] For example, during the months of January through July 1992, trading volume in the far-term series (six-month and nine-month) of both the XOC and VLE generally constituted less than 5%, and often only 1%, of the total volume in each option.

[8] Specifically, after the December 1992 expiration, the Exchange began trading the September 1993 series of options, including XOC September 500, 505, 510, 520, 525, 530, 535, and 540 calls and puts as well as VLE September 350, 355, 360, 365, 370, 375, 380, 385, and 390 calls and puts. Under the proposal, only three additional September VLE series and three additional XOC series would be listed. The Exchange notes that due to a "wrap-around situation" (which occurs when all 26 characters indicating the strike price of an options have been used and additional strike prices require listing the option with a different root symbol) in the September XOC series, strike prices of 520 and higher will be traded under the root symbol XOW, rather than XOC.

[9] See note 7, supra, for a definition and example of a "wrap-around," where XOC March 420 calls (XOC CD) use the symbol CD, with the D used to denote 420, such that the September 520 calls (XOC ID) would have used the same symbol, D, to mean 520. Thus, the root symbol was changed from XOC to XOW and the September 520 calls listed with the symbol XOW ID, with the D denoting the 520 strike price.

[10] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33012; File No. SR-Phlx-93-15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange Relating to the Handling of Registered Options Traders' Orders

October 4, 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 April 5, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 Phlx. 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 Phlx, pursuant to Rule 19b-4 of the Act, proposes to amend Floor Procedure Advice ("Advice") C-3, Handling Registered Options Traders' Orders. Specifically, the Exchange proposes to retitle Advice C-3 "Handling Orders of Phlx ROTs and Other Registered Options Market Makers," and apply the restrictions of this advice to non-Phlx registered

options traders. In addition, the Phlx proposes to add paragraph (b) to this advice to require that such orders be marked as "N" orders and represented as "BD" orders in the trading crowd. The text of the proposed rule change is available at the Office of the Secretary, the Phlx, 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 Phlx 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 Phlx 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 Phlx proposes to amend Advice C–3 to extend its restrictions to non-Phlx option market makers. Accordingly, the Phlx proposes to retitle Advice C–3 as follows: Handling Orders of Phlx ROTs and Other Registered Options Market Makers. In addition, the restrictions contained in paragraph (d) (formerly paragraph (c)) would now apply to options market makers from other exchanges such that the use of floor broker discretion [1] with respect to the orders of such market makers would be prohibited.

In addition, paragraph (b) would be added to this advice to require floor brokers to ascertain which orders are for the accounts of non-Phlx market makers. The purpose of this new provision is to establish an accurate audit trail of such orders by requiring that order tickets be marked with an "N." This paragraph would also reinforce the requirement that a Phlx floor broker when in possession of an "N" order must represent to the trading crowd that the order is a "BD" order, as orders of market makers qualify by definition as "BD" orders. The identification of such orders is consistent with the requirements of other exchanges and will add uniformity among option exchanges in this regard.[2]

In order to fulfill this obligation, the floor broker or the floor unit of the member firm with which the floor broker is associated would be required to make reasonable inquiry of the account status of orders for market makers to identify orders for the accounts of non-Phlx market makers. The purpose of this inquiry is to ensure that a complete audit trail can be captured. Currently, paragraph (a) requires floor brokers to announce to the trading crowd whether an order is for a Phlx market maker and whether such order would establish or close out an option position (opening or closing).

The Exchange believes that establishing a marking requirement for "N" orders and applying certain restrictions respecting discretionary orders to non-Phlx market makers is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade by assuring compliance with certain Exchange trading rules (*i.e.*, Ten-Up Rule) and protect investors and the public interest by improving surveillance of market maker options activity from other exchanges.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate 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 Phlx. All submissions should refer to File No. SR–Phlx–93–15 and should be submitted by November 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25026 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[1] See Phlx Rule 1065.

[2] See e.g., CBOE Rule 6.51, Interpretation .02.

[3] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC–19765; 812–8436]

SwissKey Funds, et al.; Notice of Application

October 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

Applicants: SwissKey Funds (the "Trust") (including all present and future series thereof); Short-Term World Income Portfolio, World Growth Portfolio, U.S. Dollar Cash Reserves Portfolio, and any future Hub Fund (as defined below) in which a series of the Trust invests; and any closed-end investment companies organized in the future for which the Adviser (as defined below) serves as investment adviser or which invest all of their investable assets in a Hub Fund for which the Adviser serves as investment adviser.

Relevant Act Sections: Order requested under section 6(c) exempting applicants from sections 13(a)(2), 18(a), 18(f)(1), 22(f), 22(g), and 23(a), and under rule 17d–1(b) to permit certain joint transactions otherwise prohibited by rule 17d–1(a).

Summary of Application: Applicants seek an order that would permit the applicants to implement a deferred

compensation plan for their trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act. The plan would establish an account on behalf of each participating trustee, who could elect to have his or her account either (i) valued by reference to an assumed investment of deferred fees in the applicant for which he or she serves as trustee; or (ii) credited with interest based on the 90-day U.S. Treasury bill rate.

Filing Date: The application was filed on June 10, 1993, and amended and restated on August 30, 1993, and September 27, 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 November 1, 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, 6 St. James Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, 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 Trust is an open-end management investment company organized as a Massachusetts business trust. It currently has three series: SBC Short-Term World Income Fund, SBC World Growth Fund, and SBC U.S. Dollar Cash Reserves (the "Series"). Pursuant to a "Hub and Spoke" structure operated under a contract with Signature Financial Group, Inc., each Series invests all of its investable assets in a corresponding open-end management investment company (each a "Hub Fund") that has the same investment objective as the Series. Currently there are three Hub Funds: Short-Term World Income Portfolio, World Growth Portfolio, and U.S. Dollar Cash Reserves Portfolio. The existing Hub Funds are, and it is contemplated that future Hub Funds will be, New York trusts. While none of the existing applicants is a closed-end investment company, closed-end funds organized in the future that are advised by the Adviser (as defined below), or that invest all of their investable assets in a Hub Fund advised by the Adviser, may avail themselves of the relief requested herein.

2. The investment adviser to each Hub Fund (the "Adviser") is SBC Portfolio Management International, Inc. Because the Series invest all of their investable assets in the Hub Funds, the Series have no investment adviser.

3. The Trust and each of the Hub Funds has a Board of Trustees, a majority of whose members are not "interested persons," within the meaning of section 2(a)(19) of the Act, of such applicant ("independent trustees"). Each independent trustee is paid an annual retaining and meeting fees for each Board or committee meeting attended.

4. Each applicant proposes to adopt a deferred compensation plan ("Plan") that would permit independent trustees to elect to defer receipt of trustees fees. The Plan will enable independent trustees to defer payment of income taxes and save for retirement or other reasons. Applicants submit that the Plan will enhance their ability to recruit and retain highly qualified independent trustees.

5. Each Applicant will establish a book account for each of its independent trustees participating in the Plan. The deferred fees earned by a trustee will be credited to his or her account and will earn a rate of return determined in accordance with one of two methods. Under the "Phantom Share Account" method, the trustee's account will be valued as if the deferred fees had been invested in shares of the applicant. Under the "Short-Term Earnings Account" method, all amounts in the trustee's account will earn interest at the end of each month at the "average rate" on 90-day U.S. Treasury bills. The "average rate" will be calculated by adding the rate on the last day of the current month and the rate on the last day of the preceding month, and dividing the sum by two.

6. A trustee may select either valuation method described above and may thereafter change the method only as of the beginning of each calendar quarter. A trustee may elect to receive payments under the Plan beginning either on the first day of the calendar year following the end of his or her service as trustee, or on a specific date chosen by the trustee. He or she may elect to receive payment in a lump sum or in annual installments. A trustee's right to receive payments will be nontransferable, except that payments will be made to a designated beneficiary after the trustee's death. Amounts deferred under the Plan may become payable to a trustee, in the discretion of the committee established to administer the Plan, in the event of the trustee's total disability or to alleviate financial hardship.

7. A trustee's rights and benefits under the Plan will not be represented by any form of certificate or other instrument. Applicant's obligations to make payments of amounts accrued under the Plan will be general unsecured obligations, payable solely from their general assets and property. No separate funding vehicle will be established.

8. The amounts paid to the independent trustees are expected to be insignificant in comparison to the total net assets of each applicant. Accordingly, deferral of trustee fees in accordance with the Plan is expected to have a negligible effect on any applicant's assets, liabilities, net assets, and net income. Furthermore, the Plan will not obligate an applicant to retain any particular trustee or pay any particular level of fees to a trustee.

Applicants' Legal Conclusions: 1. In connection with the adoption and implementation of the above-described Plan, applicants seek an order (i) pursuant to section 6(c) of the Act that would exempt them from sections 13(a)(2), 18(a), 18(f)(1), 22(f), 22(g), and 23(a) of the Act; and (ii) pursuant to rule 17d-1(b) that would permit certain transactions otherwise prohibited by rule 17d-1(a). Section 6(c) authorizes the SEC to exempt any person, security, or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Each applicant believes that the Plan is in its best interest and the best interest of its shareholders, and meets the appropriate statutory standards.

2. Sections 18(a) and 18(f)(1) prohibit, with certain exceptions not relevant here, registered closed-end and open-end investment companies, respectively, from issuing senior securities. Section 13(a)(2) requires that an open-end company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants contend that the

Plan possesses none of the characteristics of senior securities that led Congress to enact sections 18(a), 18(f)(1), and 13(a)(2). There will be no "borrowing" under the Plan in the sense that concerned Congress, and all liabilities created under the Plan will be offset by essentially equal assets of the applicants that would not otherwise exist if the trustees' fees were paid on a current basis. The Plan will not induce speculative investments by applicants or provide opportunity for manipulative allocation of applicants' expenses and profits; control of the applicants will not be affected; and the Plan will not confuse investors, make it difficult for them to value applicants' securities, or convey a false impression of safety.

3. Section 22(f) prohibits undisclosed restrictions on transferability or negotiability of redeemable securities issued by a registered open-end investment company. The restriction on transferability of a trustee's benefits would be clearly set forth in the Plan, would be included primarily to benefit the trustees, and would not adversely affect the interest of the trustees or of fund shareholders.

4. Sections 22(g) and 23(a) prohibit open-end and closed-end investment companies, respectively, from issuing any of their securities for services or for property other than cash or securities. These provisions prevent the dilution of equity and voting power that can result when securities are issued for consideration that is not readily valued. According to applicants, interests in the Plan should be viewed as issued not in return for services, but in return for applicants' not being required to pay such fees on a current basis. In any event, applicants assert that the Plan will not dilute the equity or voting power of any of applicants' shareholders.

5. Section 17(d) and rule 17d-1, taken together, prohibit an affiliated person of a registered investment company, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which such registered company is a participant, without prior receipt of a Commission order. Under rule 17d-1(b), the Commission will consider whether the participation of such registered company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Under either of the Plan's two valuation methods, trustees will not receive a benefit, directly or indirectly, that would otherwise inure to an applicant or its shareholders. Deferral of trustees' fees in accordance with the Plan will simply maintain the parties in the same position as if the fees were paid on a current basis. In addition, the total amount owed to trustees on a deferred basis is likely to be so small in relation to an applicant's assets as to be incapable of having a material effect upon that applicant's performance, regardless of the method of valuation.

Applicants' Condition: Applicants agree that any order granting the requested relief will be subject to the following condition:

The balance sheet for each of the applicants either will show liability and asset entreis for deferred fees or will include a footnote explaining that the applicant has offset its liability for the deferred fees with the assets that determine the amount of the applicant's liability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25089 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19767; File No. 811–3580]

Trinity Assets Trust; Application for Deregistration

October 6, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

Applicant: Trinity Assets Trust.

Relevant Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on August 5, 1993, and amended on October 1, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 1, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 125 West 55th Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or C. David Messman, Branch Chief, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations: 1. Applicant is an open-end diversified management investment company organized as a Massachusetts business trust. On October 8, 1982, applicant filed a notification of registration under section 8(a) of the Act, and a registration statement under the Securities Act of 1933 and section 8(b) of the Act. The registration statement became effective on January 10, 1983, and applicant's initial public offering commenced on that date.

2. At a meeting held on July 17, 1992, the applicant's board of trustees adopted an agreement and plan of reorganization (the "Agreement") between applicant and Mutual Fund Group ("MFG") to provide for the transfer of all of the assets and liabilities of applicant's portfolios to MFG (File No. 811–5151) in return for equivalent interests in shares of MFG. Applicant and MFG are "affiliated persons" of each other, as that term is defined in the Act, by virtue of having a common investment adviser. Applicant relied on rule 17a–8 under the Act in order to exempt the transaction from the affiliated transaction prohibition of section 17(a) of the Act. To avail itself of the rule 17a–8 exemption, applicant's board of directors determined that the merger was in the best interest of applicant and that the interests of existing shareholders would not be diluted as a result of the merger.

3. Proxy material was distributed to shareholders and filed with the Commission. The definitive proxy, dated October 15, 1992, was filed on October 20, 1992. At a special meeting held on December 4, 1992, applicant's shareholders approved the Agreement.

4. As of December 31, 1992, applicant had 76,117,755 shares outstanding of its Trinity Government Fund with a net asset value of $1 per share, 336,361,904

shares outstanding of its Trinity Money Market Fund with a net asset value of $1 per share, 8,707,868 shares outstanding of its Trinity Equity Fund with a net asset value of $12.96 per share, 4,264,504 shares outstanding of its Trinity Bond Fund with a net asset value of $10.70 per share, and 7,474,258 shares outstanding of its Trinity Short-Term Bond Fund with a net asset value of $10.18 per share.

5. On December 31, 1992, pursuant to the Agreement, applicant transferred all of the assets of its portfolios to MFG as follows: shares of applicant's Trinity Government Fund were exchanged for shares of MFG's Vista U.S. Government Money Market Fund, shares of applicant's Trinity Money Market Fund were exchanged for shares of MFG's Vista U.S. Global Money Market Fund, shares of applicant's Trinity Equity Fund were exchanged for shares of MFG's Vista Equity Fund, shares of applicant's Trinity Bond Fund were exchanged for shares of MFG's Vista Bond Fund, and shares of applicant's Trinity Short-Term Bond Fund were exchanged for shares of MFG's Vista Short-Term Bond Fund. Applicant then distributed the MFG shares it received *pro rata* to its shareholders, in a complete liquidation of applicant.

6. No brokerage commissions were paid in connection with the transfer of applicant's assets and liabilities. The total expenses incurred in connection with the transfer of assets and liabilities and liquidation of applicant, consisting of legal and accounting fees, and printing and mailing costs for the proxy solicitation, were $456,350.37. These expenses were assumed and paid by applicant until the date of the exchange, and thereafter by MFG, in the amounts of $266,658.53 and $189,691.84, respectively.

7. At the time of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to file a Certificate of Dissolution with the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–25088 Filed 10–12–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed 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.

DATES: Comments should be submitted on or before November 12, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3RD Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Gary Waxman, Officer of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: 8(a) Annual Update as prescribed

Form No.: SBA Form 1450

Description of Respondents: 8(a) program participants

Frequency: Annually

Annual Responses: 5,000

Annual Burden: 13,000

Dated: September 29, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–25064 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 06/06–0289]

FCA Investment Co.; License Surrender

Notice is hereby given that FCA Investment Company, 5847 San Felipe, Houston, Texas 77057, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended (the Act). FCA Investment Company was licensed by the Small Business Administration on August 19, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on August 12, 1993 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 28, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–25063 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting at 10 a.m. on Wednesday, November 3, 1993, at the Fleet Bank, 10 Fountain Plaza, 9th Floor Board Room, Buffalo, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Franklin J. Sciortino, District Director, U.S. Small Business Administration, room 1311, 111 West Huron Street, Buffalo, New York 14202, telephone 716/846–4301.

Dated: October 5, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25065 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

Dallas/Fort Worth District Advisory Council; Public Meeting

The U.S. Small Business Administration Dallas/Fort Worth District Advisory Council will hold a public meeting at 10 a.m. on Friday, November 5, 1993, at the SBA District Office, 4300 Amon Carter Boulevard, suite 114, Forth Worth, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James S. Reed, District Director, U.S. Small Business Administration, 4300 Amon Carter Boulevard, suite 114, Fort Worth, Texas, telephone 817/885–6500.

Dated: October 5, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25066 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

Casper District Advisory Council; Public Meeting

The U.S. Small Business Administration Buffalo District Advisory Council will hold a public meeting at 9 a.m. on Friday, November 5, 1993, at the Chamber of Commerce, 314 South Gillette Avenue, Gillette, Wyoming, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James Gallogly, District Director, U.S. Small Business Administration, Federal Building, room 4001, 100 East B Street, Casper, Wyoming 82602–2839, telephone—307/261–5761.

Dated: October 5, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–25067 Filed 10–12–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1887]

Office of Defense Trade Controls; Munitions Exports Involving Eliyahu Cohen, a/k/a Eli Cohen; A.V.S. Armoured Vehicles' Systems, Inc., a/k/a A.V.S., Inc.; A.V.S. Armoured Vehicles' Spares, Ltd., a/k/a A.V.S., Ltd.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all existing licenses and other approvals, granted pursuant to section 38 of the Arms Export Control Act, that authorize the export or transfer by, for or to, Eliyahu Cohen, a/k/a Eli Cohen, A.V.S. Armoured Vehicles' Systems, Inc., a/k/a A.V.S., Inc., and A.V.S. Armoured Vehicles' Spares, Ltd., a/k/a/ A.V.S. Ltd., and any of their subsidiaries, associated companies or successor entities, of defense articles or defense services are suspended. In addition, it shall be the policy of the Department of State to deny all export license applications and other requests for approval involving, directly or indirectly, the above cited entities. This action also precludes the use in connection with such entities of any exemptions from license or other approval included in the International Traffic in Arms Regulations (22 CFR parts 120–130) (ITAR).

EFFECTIVE DATE: September 26, 1993.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: A seven (7) count indictment was returned on March 8, 1993, in the U.S. District Court, Eastern District of New York, charging Eliyahu Cohen (principal of A.V.S., Inc., of New York and Netayana, Israel) with conspiracy (18 U.S.C. 371) to violate and violating section 38 of the Arms Export Control Act (22 U.S.C. 2778) (AECA) and its implementing regulations, the ITAR. The indictment charges that the defendant conspired to illegally export United States-origin components for the M113 Armored Personnel Carrier to Iran, without having first obtained the U.S. Department of State requisite authorization. Also, the defendant was charged with causing a false statement to be made in applications to the Department of State for licenses to export those defense articles to Israel and Portugal. *United States* v. *Eliyahu Cohen*, U.S. District Court, Eastern District of New York, Criminal Docket No. CR–93–225).

On September 26, 1993, the Department of State suspended all licenses and other written approvals (including all activities under manufacturing license and technical assistance agreements) concerning exports of defense articles and provision of defense services by, for or to Eliyahu Cohen, a/k/a Eli Cohen, Netanya, Israel; A.V.S. Armoured Vehicles' Systems, Inc., a/k/a A.V.S., Inc., New York; and A.V.S. Armoured Vehicles' Spares, Ltd., a/k/a/ A.V.S. Ltd., Netanya, Israel; and any of their subsidiaries, associated companies or successor entities. Furthermore, the Department of State precluded the use, in connection with the named persons, of any exemptions from licenses or other approvals included in the ITAR.

This action has been taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and 22 CFR section 126.7(a)(2) and 126.7(a)(3) of the ITAR. It will remain in force until rescinded.

Exceptions may be made to this policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns; and, whether other compelling circumstances exist which are consistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

A person named in an indictment for an AECA-related violation may submit a written request for reconsideration of the suspension/denial decision to the Office of Defense Trade Controls. Such request for reconsideration should be supported by evidence of remedial measures taken to prevent future violations of the AECA and/or the ITAR and other pertinent documented information showing that the person would not be a risk for future violations of the AECA and/or the ITAR. The Office of Defense Trade Controls will evaluate the submission in consultation with, *inter alia*, the Departments of Treasury, Justice, and other necessary agencies. After a decision on the request for reconsideration has been rendered by the Assistant Secretary for Political-Military Affairs, the requester will be notified whether the exception has been granted.

Dated: September 26, 1993.

Robert L. Gallucci,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 93–25198 Filed 10–12–93; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120–XX]

Proposed Advisory Circular on Helicopter Simulator Qualification

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 120–XX and request for comments.

SUMMARY: This notice announces the availability of, and requests comments on, a proposed advisory circular (AC) pertaining to the evaluation and qualification of helicopter simulators to be used in training programs or for airman checking under various parts of the Federal Aviation Regulations (FAR). This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before November 29, 1993.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, National Simulator Program Staff, AFS–205, Project Development Section, P.O. Box 20636, Atlanta, GA 30320. comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alan D. Sodergren, AFS–205, at the address above, telephone (404) 763–7773.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the draft AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 120–XX, Helicopter Simulator Qualification and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the National Simulator Program Staff before issuing the final AC.

Background

The Federal Aviation Administration (FAA) recognizes the expanding capabilities of flight simulators. As technology has progressed, Federal Aviation Regulation (FAR) revisions have been developed to permit the increased use of airplane simulators in approved training programs. To date the FAR's have not addressed the training and checking of flight crewmembers in helicopter simulators which, as a result, has limited their use. This advisory circular (AC) provides information concerning the evaluation and qualification of helicopter simulators to be used in training programs or for airman checking.

Issued in Washington, DC, on June 21, 1993.

David R. Harrington,

Acting Director, Flight Standards Service.

[FR Doc. 93–25052 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–43]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 1, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 29, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26958
Petitioner: Mr. Carroll B. Fitzgerald
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition:

To permit the petitioner to fly in part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 12656
Petitioner: Department of Defense
Sections of the FAR Affected: 14 CFR 139
Description of Relief Sought/ Disposition:

To extend Exemption No. 2129, as amended, to continue to permit issuance of FAA Airport Operation Certificates (AOC) for airports operated by the Department of Defense that serve air carrier aircraft having a seating capacity of more than 30 passenger seats, without complying with the certification and operating requirements of part 39.

Grant, September 27, 1993, Exemption No. 5750

Docket No.: 26146
Petitioner: Keystone Helicopter Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition:

To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

Grant, September 24, 1993, Exemption No. 5752

Docket No.: 27199
Petitioner: Trans-Alaska Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition:

To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

Grant, September 24, 1993, Exemption No. 5753

Docket No.: 27247
Petitioner: Trans World Express, Inc.
Sections of the FAR Affected: 14 CFR 93.123, 93.125, 93.129, and provisions of 93, subpart K
Description of Relief Sought:

To allow the petitioner to conduct additional Separate Access Landing System (SALS) commuter operations at John F. Kennedy International Airport using short takeoff and landing (STOL) aircraft and special procedures.

Grant, September 21, 1993, Exemption No. 5746

Docket No.: 27382
Petitioner: Horizon Air Industries, Inc.

Sections of the FAR Affected: 14 CFR 121.411 (a)(2), (b)(2), and 121.415 (b) and (c)

Description of Relief Sought:

To allow the petitioner to utilize certain qualified Dornier Aviation North America (DANA) flight and simulator instructors for the purpose of training Horizon Air Industries, Inc. initial cadre of pilots in the Dornier 328 (Do328) type aircraft without meeting all of the applicable training requirements of part 121, subpart N.

Grant, September 23, 1993, Exemption No. 5748

Docket No.: 27392

Petitioner: Arrow Air, Inc.

Sections of the FAR Affected: 14 CFR 121.358

Description of Relief Sought/ Disposition:

To extend the final date for installation of an approved system providing windshear warning and flight guidance until December 31, 1995, or until Arrow has complied with the requirement, whichever is earlier, so as to allow Arrow sufficient time to install the Westinghouse MODAR MR 3000 Weather and Forward Looking Windshear System on its fleet of McDonnell-Douglas DC–8–60 (DC–8) and Boeing 727 (B–727) 100 and 200 series aircraft.

Denial, September 16, 1993, Exemption No. 5741

Docket No.: 27439

Petitioner: Skywest Airlines Inc.

Sections of the FAR Affected: 14 CFR 121.411 (a)(1), (a)(2), (a)(3), and (a)(6) and 121.413 (b) and (c)

Description of Relief Sought:

To allow the South West Airlines (SWA) to utilize certain qualified Canadair pilot flight and simulator instructors for the purpose of training SWA's initial cadre of pilots in the Canadair CL–600–2B19 Regional Jet (RJ) aircraft in the United States and Canada without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of subpart N of part 121 of the FAR.

Grant, September 22, 1993, Exemption No. 5747

[FR Doc. 93–25051 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 93–73; Notice 1]

Receipt of Petition for Determination That Nonconforming 1992 Mercedes-Benz 500SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1992 Mercedes-Benz 500SE passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1992 Mercedes-Benz 500SE that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is November 12, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer No. R–90–007) has petitioned NHTSA to determine whether 1992 Mercedes-Benz 500SE (Model ID 140.050) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1992 Mercedes-Benz 400SE. G&K has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1992 Mercedes-Benz 400SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 500SE to the 400SE, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards. The petitioner surmised that Daimler Benz first introduced the 500SE into markets outside the United States where there was "higher salability potential or lesser legislative restrictions such as the strict emission control requirements in the United States, or a combination of both."

G&K submitted information with its petition intended to demonstrate that the 1992 model 500SE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1992 model 400SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1992 model 500 SE is identical to the certified 1992 model 400SE with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124

Accelerator Control Systems, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, and 219 *Windshield Zone Intrusion*.

Petitioner also contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger side rear view mirror, which is convex, but lacks the required warning statement.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components*: Replacement of the rear door locks with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a seat belt warning buzzer; (b) replacement of the existing Type 1 rear seat belts with U.S.-model belts equipped with retractors. The petitioner states that the passive restraints that are used on the 1992 model 500SE are airbags that comply with the Standard.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Standard No. 302 *Flammability of Interior Materials*: Treatment of the interior materials with a fire retardant spray.

Additionally, the petitioner states that the bumpers on the 1992 model 500SE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 5, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–25033 Filed 10–12–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 5, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8840.
Type of Review: New collection.
Title: Statement of Closer Connection Exception (Under Section 7701(b)).
Description: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regs. sec. 301.7701(b)–2.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 350,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 minutes.
Learning about the law or the form—7 minutes.
Preparing the form—19 minutes.
Copying, assembling, and sending the form to the IRS—35 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 777,000 hours.

OMB Number: New.
Form Number: IRS Form 8843.
Type of Review: New collection.
Title: Statement of Exempt Individuals (Under section 7701(b)).
Description: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the U.S. because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 150,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8843 pt. I & II	Form 8843 pt. I & III	Form 8843 pt. I & IV	Form 8843 pt. I & V
Recordkeeping	13 min	13 min	13 min	13 min.
Learning about the law or the form	5 min	5 min	5 min	4 min.
Preparing the form	25 min	26 min	31 min	21 min.
Copying, assembling, and sending the form to the IRS	17 min	17 min	17 min	17 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 154,380 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25094 Filed 10–12–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 5, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue N.W., Washington, DC 20220.

Office of Thrift Supervision

OMB Number: 1550–0027.
Form Number: None.
Type of Review: Extension.
Title: Earnings-Based Accounts.
Description: The rule is necessary in order to prevent overreliance on earnings-based accounts as fund raising tools by savings associations, which, in turn, represents a significant risk to the savings association and the Savings Association Insurance Fund.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 72.
Estimated Burden Hours Per Respondent: 25 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,800 hours.
Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25095 Filed 10–12–93; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0008.
Form Number: IRS Forms W–2, W–2c, W–2AS, W–2GU, W–2VI, W–3, W–3c, W–3cPR, W–3PR, W–3SS.
Type of Review: Revision.
Title: Wage and Tax Statements.
Description: Employers report income and withholding on Form W–2. Forms W–2AS, W–2GU and W–2VI are the U.S. possessions versions of Form W–2. The Form W–3 series is used to transmit Forms W–2's to the Social Security Administration (SSA). Forms W–2c, W–3c and W–3cPR are used to correct previously filed Forms, W–2, W–3 and W–3PR. Individuals use Form W–2 to prepare their income tax returns.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 6,493,883.
Estimated Burden Hours Per Respondent:

Form	Response time (minutes)
W–2	32
W–2c	52
W–2AS	22
W–2GU	22
W–2VI	20
W–3	27
W–3c	20
W–3PR	22
W–3cPR	28
W–3SS	22

Frequency of Response: Annually.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25096 Filed 10–12–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex,

1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0002.

Form Numbers: ATF F 1600.7.

Type of Review: Extension.

Title: ATF Distribution Center Contractor Survey.

Description: Information provided on ATF F 1600.7 is used to evaluate the Bureau's Distribution Center contractor and the services it provides to users to ATF forms and publications.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 21,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 168 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25097 Filed 10–12–93; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

October 6, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1231.

Regulation ID Number: IA–38–90 Final Regulations (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty by disclosing on a Form 8275 or be advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 50,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–25998 Filed 10–12–93; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 58, No. 196

Wednesday, October 13, 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).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: October 22, 1993.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW., Room 540, Washington, DC 20425.

STATUS: Open to the Public.

October 22, 1993

I. Approval of Agenda
II. Approval of Minutes of September 17, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Proposed 1994 Commission Meeting Dates
VI. Appointments for the Maryland, Montana, New York, Utah, Washington, and Wyoming Advisory Committees
VII. Preliminary New York Hearing Plans
VIII. Commissioner Task Force Reports
- Reauthorization
- SAC Member Processes

IX. Staff Director's Report
X. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Dated: October 8, 1993.

Emma Monroig,

Solicitor.

[FR Doc. 93–25270 Filed 10–8–93; 3:14 pm]

BILLING CODE 6335–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Amendment to Sunshine Act Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 24, 1993 (58 FR 50085) of the special meeting of the Farm Credit Administration Board (Board) scheduled for September 28, 1993. This notice is to amend the agenda by removing an item from the closed session and adding a portion of another to the closed session of that meeting.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The closed session of the agenda for September 28, 1993, is amended as follows:

[Removed]

Closed Session*

A. New Business

1. Other

a. FY 1995 Budget.

[Added]

Closed Session*

A. New Business

2. Other.

a. Merger of AgriBank FCB and Louisville FCB; Conditions for the Merger, and Retirement of Assistance Preferred Stock for Louisville FCB.

Dated: October 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–25154 Filed 10–8–93; 9:14 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 14, 1993 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Thursday, November 18, 1993. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 7, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–25155 Filed 10–8–93; 9:15 am]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 18, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–25260 Filed 10–8–93; 3:11 pm]

BILLING CODE 6210–01–P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 11, 18, 25, and November 1, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 11

There are no meetings scheduled for the Week of October 11.

Week of October 18—Tentative

Thursday, October 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 25—Tentative

Monday, October 25

10:00 a.m.
Briefing on Final Report of Regulatory Review Task Force (Public Meeting)
(Contact: Frank Gillespie, 301–504–1275)
2:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 and 7)

Tuesday, October 26

10:00 a.m.
Briefing on Severe Accident Research Program (Public Meeting)
(Contact: Brian Sheron, 301–492–3500)
2:00 p.m.

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*Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(8), (c)(9), and (c)(10).

Briefing on Proposed Standards for Gaseous Diffusion Facilities (Public Meeting)
(Contact: Charles Nilsen, 301–492–3834)

Wednesday, October 27

10:00 a.m.
Briefing on NRC Research Programs on Waste (Public Meeting)
(Contact: Nick Costanzi, 301–492–3760)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, October 29

10:00 a.m.
Briefing on Status of Thermo-Lag (Public Meeting)
(Contact: Ashok Thadani, 301–504–2884)

Week of November 1—Tentative

Wednesday, November 3

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

Note: The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: October 7, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–25203 Filed 10–8–93; 11:46 am]
BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 58, No. 196
Wednesday, October 13, 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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 931, 932, and 933

[No. 93-59]

Members of the Federal Home Loan Banks

Correction

In rule document 93-18981 beginning on page 43522 in the issue of Tuesday, August 17, 1993, make the following corrections:

1. On page 43523, in the third column, under the heading "1. Section 4(a)(1) Membership Criteria," in the first line of paragraph (C) "Makes" should read "makes" and "Home" should read "home".

2. On page 43524, in the third column, in the first full paragraph, in the ninth line, "merge" should read "merges".

3. On page 43526, in the 3d column, in the 2d full paragraph, in the 11th line, "proposes" should read "purposes".

4. On page 43527, in the 2d column, in paragraph b., in the 12th line, "Section 933.1(1)" should read "Section 933.1(l)".

5. On page 43528, in the second column, in the second full paragraph, in the first line, "§ 933.1(1)" should read "§ 933.1(l)" and in the fourth full paragraph, in the third line "§ 933.1(1)" should read "§ 933.1(l)".

6. On page 43533, in the second column, in the third full paragraph, "FHLBank" should read "FHLBanks" and "FLHBank" should read "FHLBank".

7. On page 43535, in the first column, in the last paragraph, in the fourth line from the bottom, "an" should read "a".

8. On the same page, in the 2d column, in the 17th line, "an" should read "a".

9. On the same page, in the same column, in the third full paragraph, in the ninth line, insert "of" after the word "date".

10. On page 43537, in the third column, in the last paragraph, in the third line, add a comma after "consolidation".

11. On page 43539, in the second column, in the fourth full paragraph, in the first line, "§ 993.14" should read "§ 933.14".

12. On the same page, in the third column, under the heading "1. Redemption When Advances Remain Outstanding," in the first paragraph, in the first line "§ 993.16" should read "§ 933.16".

§ 933.1 [Corrected]

13. On page 43543, in § 933.1(n), in the first column, in the last line "and" should read "or".

§ 933.9 [Corrected]

14. On page 43545, in § 933.9(b)(1), in the first column, in the fifth line, "of" should read "to".

§ 933.16 [Corrected]

15. On page 43547, in § 933.16(b), in the first column, after "canceled" add a period.

§ 933.18 [Corrected]

16. On the same page, in § 933.18(c), in the second column, in the first line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 93-72]

Extension of Saybolt, Inc., Customs Gauger Approval and Laboratory Accreditations to the Site Located in Wilmington, North Carolina

Correction

In notice document 93-22671 appearing on page 48539 in the issue of Thursday, September 16, 1993, in the second column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

federal register

Wednesday
October 13, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 294
Education Facilities Construction;
Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 294

RIN 1076–AC49

Education Facilities Construction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to add a new part 294 to formalize procedures governing the priority ranking process for education facilities construction. The new part 294 will be added under a new Subchapter P entitled Facilities Management Programs, in title 25 of the Code of Federal Regulations. The current process for priority ranking of school construction by the Department is under guidelines that were published in the **Federal Register** in May of 1979 and April of 1988. Under the guidelines a new priority ranking list has been prepared and published in the **Federal Register** each year. The process has been subject to criticism by Indian tribes and Indian organizations as well as Congress. This proposed rule is intended to provide more continuity, objectivity and accountability in the priority ranking of education facilities construction projects and to address the handling of emergency needs.

DATES: Comments must be received on or before January 11, 1994.

ADDRESSES: Written comments should be directed to Oscar W. Mueller, Jr., Acting Director, Office of Construction Management, Department of the Interior, Mail Stop 2417, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Slover, Program Liaison Specialist, Office of Construction Management, Department of the Interior, at telephone number 202–208–3405.

SUPPLEMENTARY INFORMATION: This proposed rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

This rulemaking action was originally scheduled as a new Part 37, New School Construction, to title 25 of the Code of Federal Regulations. The proposed action appeared in the October 1990 Unified Agenda published in the **Federal Register** on Monday, October 29, 1990, at 55 FR 44615; the April 1991 Unified Agenda published in the **Federal Register** on Monday, April 22, 1991, at 56 FR 17458; and the October 1991 Unified Agenda published in the **Federal Register** on Monday, October 21, 1991 at 56 FR 53483. With the publication of the April 1992 Unified Agenda in the **Federal Register** on Monday, April 27, 1992, 57 FR 16887, the part number and title for this proposed action was changed from Part 37 to Part 294, Education Facilities Construction.

Under 25 U.S.C. 2005(c) BIA was directed to publish in the **Federal Register** the system used to determine priorities for school construction projects. The BIA was further directed to publish in the **Federal Register**, a current priority ranking for school construction projects at the time any budget request was presented to Congress. The current priority ranking for school construction projects is also to be submitted with the budget request.

Guidelines were published in the **Federal Register** on May 22, 1979, at 44 FR 29864 and on April 14, 1988 at 52 FR 12471. Under the guidelines, a notice soliciting applications by a specified deadline is published in the **Federal Register** each year. Applications for new school construction filed in accordance with the notice are reviewed, validated, and priority ranked. The priority ranking list for new school construction is then published in the **Federal Register** and submitted to Congress.

Under the current process Indian tribes or Indian organizations that do not receive funding for new school construction have to file new applications each year to be considered, regardless of where their project was ranked the year before. New school construction projects that were ranked high one year might not even appear on the priority ranking list the next year.

The priority ranking process for new school construction has been criticized by Indian tribes, Indian organizations and Congress. In response to the criticism, the BIA began to develop a new Part 294 to provide new procedures to govern the priority ranking process.

The Conference Report on the FY 1992 Interior and Related Agencies Appropriation Act, House Report No. 256, 102d Cong., 1st Sess. 46 (1991), directed the Department to continue efforts to revise the priority ranking process for new school construction. The Conference Report states that emphasis should be given to tribal consultation and to improving the objectivity of the ranking process, to providing continuity to the priority ranking list, and to providing procedures for handling emergency needs.

On Thursday, October 31, 1991, a notice of tribal consultation meetings was published in the **Federal Register** 56 FR 56120. The meetings were to obtain written and oral comments on the proposed priority ranking process for both education facilities construction and for law enforcement facilities construction. The BIA is also developing a rule to govern the priority ranking process for law enforcement facilities construction. Although the consultation meetings were held together, the proposed rules are being prepared separately and the proposed rulemaking action to add a new Part 296 Law Enforcement Facilities Construction will be published at a later date.

A tribal consultation booklet containing a proposed draft of the rule (consultation document) as well as background information on and significant provisions of the process was prepared. Prior to the tribal consultation meetings, the booklet was mailed directly to all Federally recognized Indian tribes. The booklet was also mailed to all BIA-funded schools, whether the school was BIA-operated or a contract or grant school. Copies of the booklet were also available from local BIA personnel.

Tribal consultation meetings were held in Washington, D.C., and Oklahoma City, Oklahoma, on December 4, 1991; in Phoenix, Arizona, and Minneapolis, Minnesota, on December 6, 1991; in Albuquerque, New Mexico, on December 9, 1991; in Spokane, Washington, on December 10, 1991; in Gallup, New Mexico, on December 11, 1991; and in Aberdeen, South Dakota on December 12, 1991. In addition to the tribal consultation meetings, individuals could submit written comments on the proposed draft of regulations through January 3, 1992. Comments made at the meetings or submitted during the tribal consultation process will be discussed below under the heading "Comments Received During Tribal Consultation."

Summary of Proposed Priority Ranking Process

This proposed rule provides for the Assistant Secretary—Indian Affairs (Assistant Secretary) to call for the filing of applications for the next education facilities construction priority ranking process at least once every three (3) years. The Assistant Secretary will publish a notice in the **Federal Register** and will mail notices directly to all Federally recognized Indian tribes and all BIA-funded schools, whether the school is BIA-operated or a contract or grant school.

Applicants will file their applications with the Director, Office of Indian Education Programs (Director, OIEP). Applications must be filed by the deadline specified in § 294.9(d). Applications received after the deadline will not be considered in the priority ranking process.

It is important to emphasize that the priority ranking process for education facilities construction projects being proposed under part 294 is an entirely separate process from applying to the BIA for funding for the operation of an education program or increased funding for program expansion. Filing an application for an education facilities construction project under the regulations in this part does not constitute an application for a contract or grant to operate an education program or to expand an existing education program.

The regulations in proposed part 294 are to govern the priority ranking process for education facilities construction projects to accommodate BIA-funded primary and secondary education programs, whether BIA-operated, contract or grant. Applicants must have approval of the education program or program expansion prior to applying for an education facilities construction project.

The Director, OIEP, will establish an Evaluation Committee. The Evaluation Committee will do a preliminary review of all complete applications received by the deadline. Applications will be rated in accordance with the criteria specified in § 294.12.

Based on the Evaluation Committee's preliminary review of the applications, the Director, OIEP, will select those applications rated highest for application validation and further consideration. Applicants will be notified at that time by the Director, OIEP, whether or not their applications will be validated and how their application rated. The applicant can appeal an unfavorable rating to the Assistant Secretary under the appeal procedures in part 294, subpart D Appeals. Applications not selected for validation will not be priority ranked.

In consultation with the applicant and appropriate BIA personnel, the Director, OIEP, will validate the applications and determine the actual needs of the project. After completion of the application validations, the Director, OIEP, will reconvene the Evaluation Committee. The Evaluation Committee will review and rate the validated applications.

Based on the Evaluation Committee's ratings, the Director, OIEP, will rank the education facilities construction projects and identify those projects that will be added to the priority ranking list. Applicants will be notified at that time by the Director, OIEP, whether or not their education facilities construction projects will be added to the priority ranking list.

The rule also has an emergency provision. In the event of an emergency situation, as described in § 294.10, an application may be filed with the Director, OIEP, at anytime. Immediate remedial action subject to the availability of appropriated funding will be taken to repair the facility or to provide alternative facilities and may be temporary or permanent.

If the immediate action permanently takes care of the emergency situation, no further action will be taken. However, if the immediate action is temporary, then the Director, OIEP, will determine whether to handle the situation under a facilities improvement and repair project or to add the project to the priority ranking list. The Director, OIEP, will notify the applicant of the determination.

If the Director, OIEP, determines that an education facilities construction project is necessary, the project will be added to the end of the priority ranking list of education facilities construction projects.

Each year the Director, OIEP, will update the priority ranking list by deleting projects from the previously published list that have received full funding, by retaining in order any projects from the list previously prepared and published in the **Federal Register** in accordance with part 294 which have not received full funding, by adding any projects that may have been determined necessary to correct an emergency situation, and by adding any projects which have been identified during a new priority ranking process as specified in § 294.17.

The Director, OIEP, shall forward the updated priority ranking list to the Assistant Secretary. The Assistant Secretary, upon approval, shall publish in the **Federal Register** and submit to Congress the priority ranking list of education facilities construction projects. Publication of the priority ranking list in the **Federal Register** shall constitute a final agency action and may not be appealed.

Comments Received During Tribal Consultation

Comments received during the tribal consultation process will be summarized and discussed by general topics. The section or paragraph in the proposed rule will be given when appropriate.

For the purpose of easy reference, general topics will be numbered. The numbering has no direct relationship to the actual number of comments identified or the importance of a particular topic.

Some comments were received or made at the hearings that do not directly relate to the contents of the proposed rule. Those comments that do not directly relate to the priority ranking process for education facilities construction are not discussed in this rulemaking document.

1. The consultation document provided for the Director, OIEP, to be the lead official for the purposes of processing applications and preparing the priority ranking list of education facilities construction projects.

In the past the Director, Office of Construction Management, has been the lead official. Although no commentors expressed opposition, the change was questioned.

The change was intended to give the Director, OIEP, the official in the BIA responsible for education programs, more control over the education facilities construction program. The Director, OIEP, will be in a better position to determine construction priorities that best support critical education program needs.

The Director, OIEP, is the designated lead official for the priority ranking process of education facilities construction projects in proposed part 294.

2. To provide continuity to the priority ranking process, the consultation document proposed a three-year cycle. Applications for education facilities construction would be reviewed and ranked only once every three years. Once a project was ranked and named on the published priority ranking list, the project would remain on the list until funding was provided. Projects remaining from the previously published list would be retained on the list.

Under the current process applications have been reviewed and ranked yearly which has provided no continuity to the process. Projects ranked high one year may not appear on the next year's list of priority education facilities construction projects. The yearly ranking makes it difficult for Indian tribes, Indian organizations, and the BIA to plan ahead.

Although there were comments against having a three-year application cycle and retaining projects on the priority ranking list, most of the comments were very much in favor of the proposal. Submitting applications every year was time consuming for

Indian tribes and Indian organizations. The commentors were particularly in favor of projects being retained on the priority ranking list until funding was provided. Under the proposed process, Indian tribes and Indian organizations can plan ahead with some certainty and the planning and design of the facility can proceed in an orderly manner.

In the consultation document there was wording that projects would be retained until "full or partial funding" was provided. This phase concerned some of the commentors. The intent is that once an application has been validated and the actual needs determined, the education facilities construction project as it is listed on the priority ranking list will be funded subject to the availability of appropriations. The project as it is listed may, however, differ from the project as applied for by the applicant based on validated need, and the cost estimates of the project may change.

One of the commentors against the three year cycle, with the retention of projects on the priority ranking list, expressed the belief that needs might change between when a project was ranked and when it was funded. It was not clear whether the commentor was addressing education needs, in general, or the needs of the priority ranked project. That the needs might change could be true about both. However, even with a yearly process needs can change.

As is discussed below at Number 5, the Department's intent is to provide a continuous priority listing so that eligible projects are ready to be constructed once funds are appropriated. However, there is no way to determine for certain what the funding levels for education facilities construction will be from year to year. Although the intent is to conduct a priority ranking process only once every three years, § 294.9(a) in the proposed rule provides that applications for education facilities construction projects will be rated and priority ranked "at least once every three years."

The purpose is not to change the intent, but to provide some flexibility, in the event resources exceed the estimates of the project on the priority ranking list. If that does occur before the next regular application process, new or updated applications could be added to the list sooner than the three year requirement.

3. One inclusive list of priority ranked education facilities construction projects was proposed in the consultation document. Separate priority lists for new starts, major expansions, and major replacement or separate regional priority lists would not be prepared.

One commentor did state that there should be not only multiple priority lists, but also multiple processes for the various categories of construction, that is, "New Starts," "Facility Replacement," "Additions and Expansions," and "Facilities Improvement and Repairs." Another commentor suggested setting up priority lists by regions.

In drafting the consultation document, consideration was given to creating multiple lists by categories of construction. A major problem identified with creating separate lists was how to determine the sequence that projects would be funded. Should funding be one for one from each of the lists, or some other combination such as one (1) "new start" to two (2) or three (3) each of "major expansion" and "major replacement?" Or, should the available funding be apportioned among the lists and if so what would be the percentage apportioned to each?

If a funding sequence or apportionment were agreed upon, then the classifying of a particular education facilities construction project as to whether it was a new start, major expansion or major replacement could become a problem. An Indian tribe or Indian organization might believe that its project could have been ranked or would have ranked higher on a priority list if the project had been classified differently.

No benefit to the process or to meeting over-all critical educational needs could be identified that would outweigh the potential problems associated with preparing multiple lists by type of construction project. It was determined that a single list was the most equitable and the most objective.

It was also decided that one national listing would be the most equitable. There is no question that there are critical education facilities needs BIA-wide. However, the needs are not distributed equally among the various BIA area offices. Not every BIA area office will necessarily have a project priority ranked. However, every Indian tribe or Indian organization will have the opportunity to apply for an education facilities construction project at a national level.

The rule proposes in § 294.18, that one priority list be prepared of all education facilities construction project. It should be noted, however, that the priority ranking process being proposed in this Part 294 is for the purpose of ranking what is essentially major construction, that is, construction of more than 15,000 square feet. Facilities improvement and repair, which can include replacements or additions and expansions of 15,000 square feet or less, will be handled separately.

4. The consultation document provided for the Assistant Secretary to publish a notice in the **Federal Register** in February of a year when new applications for education facilities construction projects must be filed. The notice was to announce the next priority ranking process.

The notice was intended to alert Indian tribes and Indian organizations of the filing period for applications for education facilities construction projects. One commentor suggested that in addition to publishing a notice in the **Federal Register**, a notice be mailed directly to all federally recognized Indian tribes and all BIA-funded schools, whether the school was BIA-operated or a contract or grant school. This suggestion has been incorporated into the proposed rule. Section 294.9 provides that in addition to the publication of a notice in the **Federal Register**, a notice will be sent to all federally recognized Indian tribes and all BIA-funded schools.

5. The consultation document provided that after a preliminary rating, the Director, OIEP, would select the highest rated applications for further consideration and application validation. The number to be selected would be determined by the Director, OIEP, and could vary from one application cycle to the next.

Many comments and suggestions were made about this provision. The number of applications selected for further consideration and application validation will directly impact on the maximum number of education facilities construction projects that can be ranked and added to the priority list during that application cycle. It was apparent that many of the commentors believed the number of projects ranked on the priority list would determine the amount of facilities construction funding appropriated by Congress.

Although the number of new school construction projects funded has varied, not all of the projects ranked on the priority listing have been funded in one year. The number of projects listed on the priority ranking list has not determined the number of projects funded.

The Department's intent is to provide a continuous priority listing that will have a few, but only a few, "carryovers" to the next list. A few carryovers are desirable so that there are always projects which have been through the planning and design stage and are ready for construction funding. Newly ranked

projects would not be ready immediately for construction. With only a few carryovers, Indian tribes and Indian organizations will have a better idea of how soon they can expect funding after being added to the priority list.

There is no way to determine what the funding level for education facilities construction will be in the future. Also, emergency situations may result in the addition of projects to the end of the priority listing. (See discussion at Number 13, below.) To maintain a realistic priority listing, the number of applications selected may have to be adjusted. Consequently, § 294.15(a) in the proposed rule does not specify the number of applications to be selected by the Director, OIEP, for further consideration and application validation.

6. The consultation document provided for the Director, OIEP, in consultation with the applicant and appropriate Bureau personnel to validate those applications for education facilities construction rated highest and determine the actual needs of the project.

Most of the comments with regard to application validation and a determination of actual needs concerned the number of applications to be selected. Only a few concerned the application validation process and those were basically seeking clarification.

During the validation process, the Evaluation Committee and any other appropriate BIA personnel will be doing on-site visits. Information submitted by the applicant will be verified as well as information obtained from BIA records. Cost benefit analyses, feasibility studies, life-cycle cost analyses, or demographic studies may be conducted. However, it is intended that the Indian tribe or Indian organization be involved in the process.

One commentor observed that in the end it would be BIA that determined what an applicant's needs actually were. The education facilities construction project as it may be eventually priority ranked and fully funded will be based on determined need. The scope of the ranked project may not be the same as the scope of the project for which the applicant applied.

7. The priority ranking criteria proposed in the consultation document gave emphasis to safety and health considerations. In addition, to improve the objectivity of the priority process, the corresponding point values of each of the priority ranking criteria were stated.

The current procedures provide that the number of points assigned for the priority ranking of an application for construction is equal to the percentage of the school's enrollment that is "unhoused." Students are considered unhoused.

a. When the condition of the school facility is such that it can no longer be used without major repairs, renovations or complete replacement.

b. When the school can no longer meet the space requirements of an approved education program.

c. When the current enrollment of the school exceeds the design capacity of the facilities.

d. When seats are not available in any other school—Bureau operated, tribal contract or public—within a one hour's bus ride of home.

The procedures also state that consideration will be given to:

a. Cost and/or education program benefits accruing from consolidation of BIA, tribal contract, or public schools.

b. Compliance with BIA approved attendance areas including other BIA schools and public, private and contract schools, as demonstrated by historical data for past five years.

c. Demonstrated and supportable enrollment history for the past ten years and enrollment trends for the next five years or more, if available.

d. Severity of non-compliance of existing facilities with applicable Federal, tribal, or state health and safety standards.

Under the current process, determining the number of "unhoused" students involves considering more than just numbers of students. In ranking education facilities construction applications, consideration has been given to the conditions of the existing facilities, compliance with applicable Federal, tribal, or state health and safety standards, availability of seats in other schools, BIA-operated, contract, grant or public, benefits accruing from consolidation of BIA, tribal, contract, or public schools, etc. However, such factors have been lumped together under the catch-all of "unhoused."

The consultation document stated that the emphasis of the priority ranking criteria had been changed. There is more weight given safety and health considerations under the proposed criteria. However, beyond that change, the proposed criteria are consistent with the current criteria. The changes are to the terms being used to describe the criteria.

The proposed priority ranking criteria more accurately and clearly identify what is being considered during the ranking process. "Programmatic Space Needs," "Space Utilization Efficiency," "Enrollment/Population Trends," and "Availability of Alternative Facilities" are factors that have all been considered in determining the number of "unhoused" students for ranking purposes. Even the conditions of the existing facilities have been considered.

Many commentors, even those who favored the shift in emphasis, still believed that "unhoused," as a criteria, also needed to be included in the criteria. However, all of the elements of the present "unhoused" criteria have been included in the proposed criteria. The fact that there is confusion and misunderstanding concerning the "unhoused" criteria supports discontinuing its use in favor of more accurate, specific and understandable criteria. Consequently, the term "unhoused" has not been used in the priority ranking criteria in the proposed rule under § 294.12.

Comments about the change in emphasis of the priority ranking criteria, varied from supporting the change recognizing safety and health deficiencies as a priority, to being opposed to the change in emphasis. As stated in the consultation document and the proposed rule, the goal of the priority ranking process is to ensure that appropriated funding resources are applied to the most critical education facilities needs, based on an objective evaluation of the projects submitted for review.

The Department has been criticized for the unsafe and unsanitary conditions of BIA schools. Some of the facilities housing BIA funded education programs have health and safety deficiencies that are best addressed through new construction.

If the Department's limited funding resources are to be applied to the most critical education facilities needs, safety and health concerns must be a priority. Consequently, the emphasis of the priority ranking criteria under § 294.12 in the proposed rule is on safety and health concerns.

In addition to safety and health concerns, the consultation document provided for consideration of the general conditions of the facilities. The priority ranking criteria included criteria that considered handicap accessibility deficiencies, environmental deficiencies, the age of the existing facilities, the cost of operation and maintenance, and improvements to utilities and the site.

Only a few comments were made with regard to the various criteria relating to the general conditions of the facilities. No reason was usually given for suggesting a change in point value of the criteria. In at least one instance, one commentor expressed opposition to a

criterion that another commentor suggested be increased in value. Consequently, no changes have been made in the point values of the various criteria relating to the general conditions of the facilities.

The criteria that did receive considerable comment were "Availability of Alternative Facilities" and "Cooperative and/or Consolidation Arrangements." Both criteria are currently considered in determining "unhoused." Some of the commentors who expressed strong opposition to changing the emphasis from unhoused to safety and health concerns also expressed opposition to both of these criteria. Commentors were particularly concerned that availability of alternative facilities and cooperative and/or consolidation arrangement included public schools.

Many of the commentors believed that giving consideration to alternative facilities and cooperative and/or consolidation arrangements was inconsistent with the policy of "parental choice." The BIA is to afford Indian students the opportunity to attend local day schools and other schools of choice and the option to attend boarding schools when the student and the parent or guardian determine it is in the student's best interest.

The Educational Amendments of 1988 Act (1988 Amendments), Public Law 100–297, specified certain factors to be considered in deciding whether to award a contract or grant to a school that had not previously received funding from the BIA (see 25 U.S.C. 2001(k)). Among the factors are the geographical proximity of comparable public education and the adequacy and comparability of programs already available. The 1988 Amendments do, however, specifically exclude geographical proximity of comparable public education from being the primary basis for denying approval of the contract or grant.

The factors specified in the 1988 Amendments were for determining whether to approve a contract or grant for the operation of an education program. That process is separate from this process of priority ranking of education facilities construction projects. However, if geographical proximity of public schools and the adequacy and comparability of programs already available are factors to be considered in approving the operation of an education program, then it is reasonable and appropriate to consider them in the context of education facilities construction.

"Cooperative and/or Consolidation Arrangements" has a maximum point value of seven (7) out of 100. "Availability of Alternative Facilities" has a maximum point value of five (5). The point values of the two criteria combined do not exceed "Programmatic Space Needs." The intent under both criteria is to consider public schools as well as other BIA-funded schools, whether BIA-operated, contract or grant. Clearly, some priority should be given to education facilities construction projects in locations where alternatives are not available.

The consultation document provided that "Availability of Alternative Facilities" would be used to evaluate whether alternative facilities within one hours bus ride from home to schools are available. In considering the 1988 Amendments, Congress rejected past BIA attempts to define availability of alternative facilities in terms of set time traveled or distance traveled. [See House Conference Report No. 100–567, 100th Cong., 2nd Sess. 398–399 (1988).] The BIA needed to recognize that climatic conditions or terrain, making students' places of residence inaccessible during a period of the year, might warrant special consideration. BIA was instructed to consider the age of the children, and the distances and times in all types of weather and at all times of the year.

The "Availability of Alternative Facilities" criterion contained in the consultation document has been changed to be consistent with this Congressional direction. The proposed rule provides, under § 294.12(k), that applications will be evaluated to determine whether alternative facilities are available within a reasonable bus ride time from the residence of the students to school. Both the age of the children and conditions or terrain directly impacting on year-round accessibility to the residence of the students or the alternative facilities will be taken into account.

The point values assigned to the priority ranking criteria for education facilities construction, contained in § 294.12 of the proposed rule, are the same as those that were in the consultation document. In response to some of the comments and questions raised during the consultation process, there has been further clarification of the criteria. Commentors were particularly interested in knowing how applications would be rated under the various criteria, that is, what conditions would result in higher points under each of the criterion.

The priority ranking criteria were listed in the consultation document in descending order of points assigned. As is discussed below at Number 8, it was not clear to commentors why some of the information under "Contents of Applications" was being requested. As was suggested by commentors, under "Contents of Applications," the criteria to which the information responds is identified. Some of the information requested may respond to more than one criterion. Consequently, it was helpful to rearrange the criteria in the proposed rule so that related criteria are listed together.

8. Under "Contents of Applications," the consultation document requested certain types of information. The information submitted would then be used as the basis for a preliminary review of applications for education facilities construction projects. Those projects which had little or no chance of successfully competing would be eliminated early in the priority ranking process.

The intent was to request a minimal amount of information that could be provided by applicants. The application process would involve nothing more than gathering the information and including it in the application. The consultation document did not request any analyses or studies. All Indian tribes or Indian organizations could compete equally irrespective of the resources they had to prepare the application and the amount of technical assistance they received.

Numerous comments were received concerning the "Contents of Applications" portion of the consultation document. For the most part the comments were critical. Commentors believed that some of the information did not relate to the criteria and should not be asked; that the BIA already had some of the information and should not be requesting it from applicants; that it was not clear what was being requested; or that the request put an undue burden on the Indian tribe or Indian organization to respond. As a result of the comments, contents of applications as proposed in § 294.11, has been almost entirely changed from what was in the consultation document.

Several of the commentors questioned the relationship between some of the information requested and the criteria. In some cases questions commentors believed should be deleted directly related to one of the priority ranking criteria. The objection may really have been to the criterion and what would be considered under the criterion.

As an example, several commentors objected to applicants being requested to name all other elementary and secondary schools, whether Federal, public or private, within the attendance boundary or proposed attendance

boundary and their round trip distance from the education facility or proposed education facility in miles and bus travel time. However, other schools in the area clearly responds to the criterion of "Availability of Alternative Facilities."

As discussed above under Number 7, in determining whether there are available alternative facilities, the BIA may consider the geographical proximity of public schools and the adequacy and comparability of programs already available. Furthermore, the applicant is in a better position to know what the actual travel time is to the other schools and whether there are any climatic conditions or terrain that directly impact on year-round accessibility. When such estimations are left to the evaluators, it may not accurately represent the drive time in a school bus under various weather conditions.

On the other hand, commentors pointed out it was not clear what was meant by "Federal" elementary and secondary schools. In § 294.11(a)(7)(i), "BIA-funded" has been substituted for "Federal."

With further clarification of the priority ranking criteria in § 294.12, some of the information being requested may seem more relevant. However, the applicable criteria have been specified. This was suggested by some of the commentors. An exception to specifying the criterion is under § 294.11(a). The information in § 294.11(a) responds to information requested on Standard Government Form–424.

Some of the commentors believed information being requested in the consultation document was under the control of the BIA. The applicant should not be expected to provide the information. The BIA does maintain an inventory of facilities including education facilities. The inventory has been automated and is referred to as the Facilities Construction, Operations and Maintenance system (FACCOM).

Some of the information requested in the consultation document is information that is contained in the BIA facilities inventory. It was expected that technical assistance would be provided to Indian tribes and Indian organizations by BIA facilities personnel to obtain the information. Indian tribes and Indian organizations would then know what information was going to be considered in evaluating their applications for education facilities construction projects.

Information requested in the consultation document that has been identified as being contained in the BIA facilities inventory or for that matter being under the control of the BIA has been eliminated in the proposed rule. Applicants are still, however, being requested to submit any reports or information relating to the conditions of the facilities that may have come from other sources such as the state, the tribe or other U.S. Government agencies. BIA personnel may not know about the other reports or information.

Under § 294.11 in the proposed rule, information or categories of information which will be supplied by the BIA and considered in the evaluation of the application for an education facilities construction project have been indicated in § 294.11(c). Stating what information will be used by BIA personnel is intended to help Indian tribes and Indian organizations fully understand and know what is being considered in evaluating their applications.

Some of the commentors believed it was not clear what information was being requested. In some cases the fact that commentors asked for clarification showed it was not clear what was meant or what was being asked. An example was given above of referring to "Federal" schools. In other cases commentors brought up circumstances unique to their area which presented problems in responding to some of the questions. It was not clear to the commentors how they should answer or what information they should supply. An example of unique circumstances is the lack of reservations in the State of Oklahoma.

In revising § 294.11 for inclusion in the proposed rule, every effort has been made to clarify those items which commentors questioned or requested clarification during the consultation process.

Some of the commentors also believed some items requested put an undue burden on the tribe or Indian organization. Requiring tribal resolutions was objected to as being too burdensome. The policy of the U.S. Government is to deal with Indian tribes on a government-to-government basis. A tribal resolution represents the will of the tribal government. Without formal action, the BIA has no other way to be certain that education facilities construction projects have the approval of the tribe or that particular individuals are authorized to act on behalf of the tribe.

Education facilities construction projects may involve sizable expenditures of Federal funds. Requiring tribal resolutions is reasonable and justified.

Other items that commentors objected to as being too burdensome, may have been more a matter of not understanding what was being requested. For example, applicants were asked in the case of existing facilities to provide a simple diagram of the floor plan of the facility. Applicants were then asked to describe how each classroom, office, or other area is used and the dimensions of the area.

The information supplied will be used for evaluating the application under both Programmatic Space Needs (12 points) and Space Utilization Efficiency (6 points). Although the BIA may have information on overall square footage of facilities and space utilization, the applicant is best qualified to provide accurate and specific information concerning the use of the various classrooms, offices, or other areas.

The consultation document stated that the diagram need not be an architectural drawing. The fire evacuation diagrams that are or should be posted in every facility are acceptable. Nevertheless, a commentor believed it would be difficult to provide without the assistance of local facilities staff.

It is not possible for the evaluation committee during the preliminary review to meet with all the applicants who have applied for education facilities construction projects and tour all the facilities. The initial review will have to be based on information contained in the application and information under the control of the BIA and the Department. Consequently, it is important that this information is accurate and adequate to evaluate the projects fairly.

An attempt has been made to eliminate requests for information that is under the control of the BIA or Department. Information that directly addresses the criteria has been reviewed to determine whether the information can be obtained by BIA personnel through other sources or whether something less can be used. All comments about specific items have been considered and an effort has been made to clarify what is requested.

9. The consultation document provided for the Director, OIEP, to review for completeness applications filed for education facilities construction projects. Applicants would be advised of deficiencies in their application and given 30 days to provide the additional information. Incomplete applications would not be considered in the initial review by the Evaluation Committee.

Review of the applications for completeness is intended as a technical review. There will be no evaluation of

the information submitted at that time. As a result of changes made under § 294.11 Contents of Applications, the Director, OIEP, will also be responsible for obtaining information under the BIA control and including the additional information with the application.

The consultation document provided for the Director, OIEP, to notify applicants and to identify the specific deficiencies in their applications. One commentor suggested that the Director, OIEP, be further directed to provide technical assistance to rectify those deficiencies.

The Director, OIEP, may not really be in the position to provide the assistance needed to rectify the deficiencies. As an example, the Director, OIEP, cannot make the tribe or tribal council enact a tribal resolution. Consequently, it would not be appropriate to include such a provision.

The consultation document provided for the BIA to provide technical assistance upon written request of a Indian tribe or Indian organization. A section of the document was entitled "Pre-application planning and assistance." Technical assistance could include assistance in appraising problems of health and safety and in obtaining and completing the application. It was further provided that any Bureau Line Officer would make any information available to the applicant needed to prepare the application except as exempted from disclosure by the Freedom of Information Act or restricted under the Privacy Act or other applicable law.

Although the consultation document implied that technical assistance was only available during the pre-application stage, that was not really the intent. An Indian tribe or Indian organization should be able to request technical assistance from the BIA throughout the priority ranking process. Technical assistance should be available for obtaining and completing the application, correcting identified deficiencies in the application, or filing appeals. The title as well as the contents of § 294.6 in the proposed rule have been changed to clarify when technical assistance may be requested.

The consultation document provided that incomplete applications for education facilities construction would not be reviewed by the Evaluation Committee. What constituted an incomplete application was not specified. In reviewing the comments received during consultation and the priority ranking process being proposed, it has been determined that only two deficiencies should prevent an application from receiving initial review by the Evaluation Committee.

The two deficiencies that will prevent an application for an education facilities construction project from being considered are: (1) No evidence of approval by the Director, OIEP, for the education program, in other words, the education program is not BIA-funded and (2) no appropriate tribal resolution of review and approval of the application. Section 294.13(f) of the proposed rule specifies the deficiencies which will prevent consideration of an application for an educations facilities construction project.

10. The consultation document provided for the Director, OIEP, to establish an Evaluation Committee for the purposes of reviewing and rating education facilities construction projects. The Evaluation Committee would be comprised of appropriate Bureau personnel, including education personnel and facilities personnel.

Those comments that were received generally agreed that the Evaluation Committee should be comprised both of education personnel and facilities personnel. Commentors also recommended that there be tribal representation on the Evaluation Committee. Tribal representation was considered during the drafting of the consultation document. As a result of the comments it was again considered. It was determined that tribal representation on the Evaluation Committee was not really feasible. It would not be possible to have a fair cross-representation of Indian tribes while at the same time maintaining a committee of workable size.

Providing for geographical representation was also recommended by commentors. An attempt has been made in the past to use BIA personnel who represent various areas. There is no reason to believe it will not continue. However, to require geographical representation may decrease the ability of the Director, OIEP, to select the most qualified individuals. In addition many Bureau personnel are also members of Indian tribes. Would such individuals be considered to represent the geographical area in which they were employed or in which their Indian tribes were located?

One way "conflict of interest" has been handled in the past is for committee members not to participate in evaluating applications from the tribe in which they are members or schools for which they have any administrative responsibility. This exclusion has been included in the proposed regulations in § 294.14(e).

The regulations are also proposing that the Director, OIEP, may include personnel from the U.S. Department of Education. It is one possible way of including personnel familiar with education programs who would not have any "conflict of interest" and who would be from outside the BIA. This might also partially respond to the one commentor who believed that as long as BIA personnel were involved, the process would not be fair.

11. The consultation document provided for the Director, OIEP, to notify individuals of their ratings after the initial review and explain the reasons for the ratings.

Under the current process, applicants have complained that they never know what is happening on their applications. They file applications for new school construction and never hear anything afterwards. The only comment directly related to the notification process was to ask when applicants would be notified.

The proposed rule provides for notification to all applicants of the ratings in § 294.15 after the initial review by the Evaluation Committee. An explanation will be provided of their rating for each criterion. Information used to rate the application that was not supplied by the applicant will be identified. The intent is to provide accountability to applicants and improve the objectivity of the process.

12. Self-contained appeal provisions were included in the consultation document. With one exception, any decision or action taken by a Bureau Line Officer incident to an Indian tribe or Indian organization filing an application for an education facilities construction project was to be appealable. The exception was the Assistant Secretary's notification of actual priority ranking which is final for the Department.

There were some comments concerning the appeal procedures as they were proposed in the consultation document. Commentors also requested clarification of some of the provisions.

The self-contained appeal procedures were intended to be similar to those provided for under 25 CFR part 2 Appeals from Administrative Actions. However, the procedures specifically addressed appeals possible under the priority ranking process of education facilities construction projects. The intent was to simplify the process.

The appeal procedures proposed in the consultation document provided for the Assistant Secretary—Indian Affairs to act finally on appeals. Under the regulations contained in Part 2, Appeals from Administrative Actions, final agency action may be taken by the

Assistant Secretary—Indian Affairs or by the Board of Indian Appeals in the Office of Hearings and Appeals, Department of the Interior.

It was suggested by commentors that a final appeal should be either to the Board of Indian Appeals or to some independent board, not the Assistant Secretary. Decisions in the priority ranking of education facilities construction projects basically involve the review of facts not interpretations of the law. Consequently, the Assistant Secretary is the appropriate Department official to take final action on appeals under this Part.

Some of the commentors pointed out inconsistencies in the consultation document with the procedures contained in 25 CFR part 2. Part 2 provides for the notice of appeal to be filed within 30 days and the appeal within 60 days. The procedures set out in the consultation document provided for the appeal to be filed within 30 days. In addition commentors pointed out that there were no timeframes stated in which Bureau Line Officers had to act on appeals.

The intent of the self-contained appeal procedures was, as stated above, to simplify the process not to create conflicting procedures. Different timeframes and requirements can be confusing. For that reason changes have been made to the appeal procedures contained in subpart D. The appeal provisions in the proposed rule are intended to be more procedurally consistent with the regulations contained in part 2. Some timeframes in which Bureau Line Officers have to act on appeals have also been included.

Commentors questioned the fact that procedures were included for appealing actions or decisions by Agency Superintendents for Education or Area Education Programs Administrators. The Director, OIEP, is the lead official in the priority ranking process. It was unclear to commentors how other Bureau Line Officers would be involved in the process.

The consultation document provided for the BIA to provide technical assistance and information to Indian tribes and Indian organizations. Assistance would most likely be provided by Agency Superintendents for Education or Area Education Programs Administrators. Therefore, there was the potential for a Bureau Line Officer other than the Director, OIEP, to take an action or make a decision during the priority ranking process that a tribe or Indian organization might wish to appeal.

As discussed under Number 9, above, providing technical assistance to Indian tribes and Indian organizations during the priority ranking process is included in the proposed rule. Consequently, procedures for appealing decisions or actions by Agency Superintendents for Education and Area Education Programs Administrator as well as Superintendents and Area Directors have been included in the proposed rule.

The consultation document stated that the Assistant Secretary's notification of final priority ranking was not appealable. The procedures in the proposed rule with regard to notification of ranking and preparation, approval and publication of an updated priority ranking list of education facilities construction projects have been changed from those contained in the consultation document. The reason for the changes will be discussed below at Number 13.

Under the proposed rule after the final review and the ranking of applications, applicants will be notified whether or not their education facilities construction project will be added to the next priority ranking list. Until the priority ranking list is updated for publication, there is no way to know what the actual ranking of the project will be on the published priority ranking list. Notifying applicants of a ranking in relation to the other projects to be added to the priority ranking list would be very misleading to the applicant. For that reason no ranking will be stated in the notification.

Upon approval of the updated priority ranking list of education facilities construction projects, the Assistant Secretary will publish the listing in the **Federal Register**. Publication of the priority ranking list in the **Federal Register** shall constitute a final agency action and may not be appealed.

13. The consultation document included an emergency situation provision. Under certain specified emergency conditions, an application for an education facilities construction project could be filed at any time with the Director, OIEP. The consultation document further provided that emergency situations would be handled separately from the fixed priority listing.

There was extensive discussion during the consultation meetings concerning the emergency situation provision. Commentors requested clarification about the provision and wanted to know how much was budgeted under emergency funding.

The consultation document identified what constituted an emergency situation, but did not state the process for handling an emergency situation. The Department does not receive emergency funding for facilities construction as the consultation document may have implied. Emergency situations will have to be handled within the amount appropriated generally for ongoing facilities improvement and repair and new education facilities construction.

In the past a priority ranking of new school construction has been developed each year. As a result of the priority list changing yearly, emergency situations had the effect in the past of "bumping" projects from receiving funding. An emergency situation may have been handled in the year that the particular project rated high enough for funding consideration. As a result of the emergency, the project did not receive funding and never rated high enough again for funding consideration.

In addition to believing there were emergency funds, commentors seem to have the impression that an emergency situation would always result in a new school. In some cases the damage to a facility may be so extensive that a new facility is necessary. However, in other cases something less than an entirely new facility may handle the emergency.

As was indicated above under Summary of Proposed Priority Ranking Process, the proposed rule provides that an application for an emergency situation may be filed with the Director, OIEP, at anytime. An emergency situation can be as a result of a fire or natural disaster.

The second condition that constitutes an emergency situation has been clarified from what was contained in the consultation document. An emergency situation exists when there is a determination by the BIA safety officer that facility conditions constitute an imminent danger to health and safety.

The proposed rule in § 294.10 clarifies the process in the event of an emergency situation. Procedures include the possible addition of the project to the end of the previously published priority ranking list of education facilities construction projects. Action to add a project to the priority ranking list by the Director, OIEP, will require the approval by the Assistant Secretary.

The proposed rule provides in § 294.19 for the yearly publication of an updated priority ranking list of education facilities construction projects. This will provide notice of which education facilities construction projects have received full funding and have been removed from the priority ranking list and which projects, if any, have been added to the list as a result of emergency situations or as a result of the priority ranking process. The provision will also satisfy the

requirements of 25 U.S.C. 2005(c). The Department is required to publish yearly in the Federal Register and submit with the budget request the current list of school construction priorities.

14. Under who may apply the consultation document provided that any Indian tribe(s) or Indian organization(s), or Bureau Line Officer could submit an application for an education facilities construction project.

The consultation document also provided that in the case of a contract or grant school, the Indian tribe or Indian organization must control and manage the school. Title to the land on which the school is located must be vested with the Indian tribe or the United States; or a lease for the useful life of the improvement must be entered with the tribe or the United States for the ground on which the education facility is located. Further, a BIA-operated, contract or grant school must have a minimum current enrollment or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12.

Commentors requested clarification about most of the provisions relating to who could apply. The wording of the consultation document may have contributed to some of the confusion in distinguishing what requirements applied to BIA-operated schools, what applied to contract or grant schools and what applied to both.

A Bureau Line Officer may apply for an education facilities construction project on behalf of a BIA-operated school. In the case of a BIA-operated school, an Indian tribe or Indian organization does not have to control and manage the school. Title to the land must be vested with United States or a lease entered into for the useful life of the construction project. The BIA-operated school must also meet the minimum current or projected enrollment requirement.

An Indian tribe or tribal organization or a Bureau Line Officer may apply for an education facilities construction project on behalf of a BIA-funded contract or grant school. The Indian tribe or Indian organization must control and manage the school. Title to the land must be vested with the Indian tribe or the United States or a lease entered into for the useful life of the construction project. The BIA-funded contract or grant school must also meet the minimum current or projected enrollment requirement.

An effort has been made to clarify what requirements apply to which applicants and what type of education facilities. The revised provisions are contained in § 294.7 of the proposed rule.

There were several comments about requiring a minimal current or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12. The commentors all objected to the minimal requirement.

The minimal enrollment requirements contained in the consultation document were those that have been included in the BIA Manual and in 25 CFR Part 274—School Construction Contracts or Services for Tribally Operated Previously Private Schools. A school with an enrollment figure of less that 25 students in grades K through 8 and/or 50 students in grades 9 through 12 would not prove economically feasible to construct. Consequently, minimal enrollment requirements of 25 and/or 50 have been included in § 294.7 of the proposed rule.

15. The consultation document provides for Indian tribes and Indian organizations to apply for facilities construction projects which are new starts, major expansions, or major replacements of federally owned, leased, contracted, or granted education facilities. An attempt was made to define these construction program categories to distinguish them from what is considered Facilities Improvement and Repair.

Definitions were included in the consultation document for new starts, major expansions and major replacements as well as additions and expansions and facilities component replacement which are considered under Facilities Improvement and Repair. Basically a threshold of more than 10,000 square feet was used to distinguish between the new or major construction and facilities improvement and repair.

From the comments received it is apparent that the definitions were not clear and including definitions for terms not used in the rule was confusing. There were questions about what was meant by some of the terms used in some of the definitions. An effort has been made in drafting the proposed rule to make the definitions more understandable and eliminate definitions for terms not used in the rule. The definitions are contained in § 294.5 of the proposed rule.

With regard to 10,000 square feet as a threshold, the few comments received went both ways. Some commentors believed it was too high. Some commentors believed it was too low suggesting the threshold be 20,000 or 30,000 square feet. The threshold has been increased in the proposed rule, but only to 15,000 square feet.

16. The consultation document provided procedures to govern the priority ranking of education facilities construction. Education facilities were defined as any facility listed on the BIA facilities inventory, whether owned or not owned by the Federal government, that is operated and/or funded by the Office of Indian Education Programs, Bureau of Indian Affairs, for the direct support of Indian education.

Many of the commentors requested clarification as to the types of facilities that would be built. What was included under facilities for the direct support of Indian education was not clear.

Indian tribes and Indian organizations can apply under the regulations being proposed in part 294 for primary or secondary school facilities, which may include classrooms, administrative offices, multi-purpose rooms or gymnasiums, cafeterias, etc. BIA-funded dormitories for primary or secondary Indian students are also considered education facilities.

In addition Indian tribes and Indian organizations may apply for additions and expansions, which are greater than 15,000 square feet, to existing primary and secondary schools. Application may also be made for replacement of existing primary and secondary schools or portions of a school. Both additions and expansions and replacements may include classrooms, gymnasiums, and cafeteria/kitchens.

The definition in § 294.5 of education facilities has been expanded to clarify what types of facilities or buildings are considered education facilities.

Several commentors asked about quarters for education personnel. Quarters are handled separately and have not been included in the definition of education facilities. Applications for quarters for education personnel will not be accepted under the regulations proposed in part 294.

The Office of Management and Budget has established requirements that must be met for the construction of quarters at a government facility. The administration of quarters within the Department of the Interior is governed by Departmental manual provisions contained in 400 DM and regulations contained in 41 CFR part 114–51.

17. The consultation document did not define or use the term temporary structures or temporary facilities. However, several commentors requested clarification as to what was considered a permanent structure or facility and what was considered temporary.

So-called portables and modular structures have been used in various locations to meet additional space needs or in response to an emergency

situation. In some cases a modular is intended as a temporary measure. However, in other cases a modular is intended for long-term use. Not all critical needs can be addressed by the on-site construction of an addition or expansion or the replacement of the facility.

What is considered a temporary structure or facility is significant in evaluating applications for education facilities construction projects. A temporary structure is not included in determining what the existing space is of a facility. In expanding on the priority ranking criteria in § 294.12 of the proposed rule, the term, temporary structure(s), has been used. Temporary structure(s) has also been defined under § 294.5.

18. Other minor changes have been made from what was contained in the consultation document. Some of the changes in the proposed rule are in response to other comments that were made during consultation. Some are purely editorial or are not intended to make any significant substantive changes.

Other Information

The primary author of this document is Kathleen L. Slover, Program Liaison Specialist, Office Construction Management, Department of the Interior.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed rule to the location identified in the ADDRESSES section of this document.

The information collection requirements contained in § 294.11 are those necessary to comply with the application requirements of the Office of Management and Budget (OMB) Circular A–102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq. and assigned approval number 0348–0006. This information is collected for the purpose of applying for Federal assistance and will be used in determining priority ranking of education facilities construction projects. The obligation to respond is a requirement to obtain a benefit.

The Department of the Interior has determined that this is not a major rule under Executive Order 12291 because only a limited number of individuals and Indian tribes will be affected. This rule provides procedures for the priority ranking of education facilities construction projects for BIA-funded schools. Annual funding for education facilities construction is limited and the few projects funded in any one year may be disbursed in various geographical areas. Accordingly, this rule will not have a significant gross annual effect on the economy.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

The Department of the Interior has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

In accordance with Executive Order 12630, the Department of Interior has determined that this rule does not have significant takings implications.

The Department of the Interior has determined that this rule does not have significant federalism effects.

The Department of the Interior has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 294

Indians—facilities construction, Indians—education, Indians—schools.

For the reasons set out in the preamble, Title 25, chapter I, of the Code of Federal Regulations is proposed to be amended by adding Subchapter P consisting of part 294 as set forth below.

SUBCHAPTER P—FACILITIES MANAGEMENT PROGRAMS

Subchapter P—Facilities Management Programs

PART 294—EDUCATION FACILITIES CONSTRUCTION

Subpart A—General Provisions

Sec.

294.1 Purpose and scope.
294.2 Information collection requirements.
294.3 Revision or amendment of regulations.
294.4 Statement of policy.
294.5 Definitions.
294.6 Assistance to Indian tribe(s) and Indian organization(s).

Subpart B—Application Process

294.7 Who may apply.
294.8 Obtaining application materials.
294.9 Filing of applications and the deadline for filing.
294.10 Emergency situations.
294.11 Contents of applications.

Subpart C—Priority Ranking

294.12 Priority ranking criteria.
294.13 Technical review of applications by Director, OIEP.
294.14 Establishment of Evaluation Committee and initial review of applications.
294.15 Notification of preliminary rating.
294.16 Application validation and final review by the Evaluation Committee.
294.17 Ranking of applications and notification of ranking.
294.18 Preparation of the priority ranking list.
294.19 Approval and publication in the Federal Register of the priority ranking list.

Subpart D—Appeals

294.20 Appeals.
294.21 Appeals from actions or decisions by Agency Superintendents for Education or Area Education Programs Administrators.
294.22 Appeals from actions or decisions by Superintendents.
294.23 Appeals from actions or decisions by Area Directors.
294.24 Appeals from actions or decisions by the Director, OIEP, or the Commissioner.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 13; 25 U.S.C. 295; 25 U.S.C. 2005(c); 29 U.S.C. 794.

Subpart A—General Provisions

§ 294.1 Purpose and scope.

(a) The purpose of this part is to codify the policies, procedures, and requirements applicable to a multi-year priority ranking process for education facilities construction projects which includes new starts, major expansions, or major replacements of federally owned, leased, contracted or granted education facilities. This priority ranking process is not a contractible program under the Indian Self-Determination and Educational Assistance Act (Pub. L. 93–638, 88 Stat. 2203), as amended.

(b) The goal of the priority ranking process is to ensure that appropriated funding resources are directed to the most critical education facilities needs.

(c) The multi-year priority ranking process established in this part does not apply to facilities construction for postsecondary schools or institutions, including tribally controlled community colleges, or to employee housing.

§ 294.2 Information collection requirements.

(a) The information collection requirements contained in § 294.11 are those necessary to comply with the

application requirements of the Office of Management and Budget (OMB) Circular No. A–102. The Standard Form 424 and attachments prescribed by such circular are approved by OMB under 44 U.S.C. 3501 et seq. and assigned approval number 0348–0006.

(b) Section 294.11 describes the types of information that would satisfy the application requirements of Circular A–102 for this education facilities construction program. Information necessary for an application for Federal assistance will be submitted on Standard Form 424 which may be obtained with application materials in accordance with § 294.8.

(c) This information is collected for the purpose of applying for Federal assistance and will be used in determining priority ranking. The obligation to respond is a requirement to obtain a benefit.

§ 294.3 Revision or amendment of regulations.

Before making substantive revisions or amendments to the regulations in this part, the Assistant Secretary shall take the following actions:

(a) Consult with Indian tribes and to the extent practical national and regional Indian organizations about the need for revisions or amendments and consider their views in preparing the proposed change to this part.

(b) Publish the proposed revisions or amendments in the **Federal Register** as proposed rulemaking, with a 90-day comment period, to provide adequate notice to, and receive comments from, all interested parties.

(c) After consideration of all comments received, publish the regulations in the **Federal Register** in final form not less than 30 days before the date they are made effective.

(d) Nothing in this section shall preclude Indian tribes or national and regional Indian organizations from initiating requests for revisions or amendments. Such requests shall be submitted in writing to the Assistant Secretary—Indian Affairs and will be subject to paragraphs (a), (b), and (c) of this section.

§ 294.4 Statement of policy.

It shall be the policy of the Bureau to:

(a) Acquire, construct, improve and repair or otherwise provide Federal education facilities so as to comply with all applicable health and safety codes and standards.

(b) Acquire sites, construct, replace, renovate, repair, discontinue use of, excess and/or demolish Federal education facilities within the Bureau facilities inventory in consultation with affected Indian tribes.

(c) Give consideration to new starts, major expansions, and major replacement construction projects for educational purposes which cannot be accomplished by other Federal agencies and which promote the development of tribal school systems serving students as close as possible to the permanent residence of the students, on a day basis, and within defined attendance boundaries.

(d) Replace facilities when economically advantageous to the Government given the life expectancy and long range need for such facility.

(e) Minimize the disruption of education programs during new starts, major expansions, and major replacements of facilities to the extent feasible.

(f) To the extent practical and within available resources, education facilities construction projects should be designed to provide a comprehensive education program consistent with Federal guidelines and requirements.

(g) Plan, design, and construct or otherwise provide federal facilities so as to comply with all applicable Federal programmatic space standards.

(h) Apply value engineering to all new starts, major replacement and major expansion projects.

§ 294.5 Definitions.

As used in this part 294:

Agency Superintendent for Education means the official in charge of education functions at a Bureau Agency Office or an authorized representative acting under delegated authority or any successor official.

Appellant means a person authorized to file an appeal from an action or decision by or on behalf of an Indian tribe(s) or Indian organization(s).

Applicant means a person who applies for an education facilities construction project under § 294.7.

Application validation means the verification of data submitted in an application by a team consisting of professional architects, engineers, and educational personnel to determine the accuracy of information in the application and in BIA records and to determine the actual needs of the project. The validation process may include a cost benefit analysis, a feasibility study, a life-cycle cost analysis, a cost effectiveness study or a demographic study or other methods of validating the application.

Area Education Programs Administrator means the official in charge of education functions at a Bureau Area Office or an authorized representative acting under delegated authority or any successor official.

Area Director means the official in charge of a Bureau Area Office or an authorized representative acting under delegated authority or any successor official.

Assistant Secretary means the Assistant Secretary for Indian Affairs, Department of the Interior, or an authorized representative acting under delegated authority.

Bureau means the Bureau of Indian Affairs of the Department of the Interior.

Bureau funded school means a Bureau school, a contract school, or a grant school.

Bureau line officer means any Agency Superintendent for Education; Superintendent; Area Education Programs Administrator; Area Director; the Director, OIEP; or the Commissioner.

Bureau school means a Bureau operated elementary or secondary day or boarding school or a Bureau operated dormitory for students attending an elementary or secondary school other than a Bureau school.

Commissioner means the Commissioner of Indian Affairs of the Department of the Interior or an authorized representative acting under delegated authority.

Contract school means an elementary or secondary school or a dormitory which receives financial assistance for its operation under a contract or agreement with the Bureau under the Indian Self-Determination and Educational Assistance Act (25 U.S.C. 450f, 450h(a), or 458d).

Director, OIEP means the Director, Office of Indian Education Programs, or an authorized representative acting under delegated authority.

Education Facility means any facility, whether owned or not owned by the Federal government, that is operated and/or funded by the Office of Indian Education Programs, Bureau of Indian Affairs, for the direct support of primary and secondary Indian education. An education facility may include an entire school facility or building, or a component(s) of a school facility or building, such as, classrooms, administrative offices, a multi-purpose room or gymnasium, a media center or library, a cafeteria/kitchen; or a Bureau funded dormitory for primary or secondary Indian students.

Facility means any building, structure or other improvements to real property such as, but not limited to, water storage tanks, water and sewer distribution lines, electrical distribution systems, sewage lagoons, parking lots, streets, and other site improvements.

Flow-through funding means funds received by the Bureau from other

Federal governmental departments or from private sources for the operation of education programs in the Bureau.

Governmental unit means a Federal, tribal, state, county or other local governmental entity, or a functional element of a governmental entity, such as a public school board.

Grant school means an elementary or secondary school which receives financial assistance for its operation under a grant under the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.) from the Bureau.

Indian Health Service means the Indian Health Service of the United States Department of Health and Human Services.

Indian organization means any group, association, partnership, corporation, or other legal entity owned or controlled by a federally recognized Indian tribe or tribes, or a majority of whose members are members of federally recognized Indian tribes.

Indian tribe means any Indian tribe, band, nation, rancheria, pueblo, colony or community, including any Alaska Native village or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) which is recognized by the Secretary as eligible for the special program and services provided by the Bureau to Indians because of their status as Indians.

Life-cycle cost analysis means a general method of economic evaluation which takes into account all relevant costs of a facility design, system, component, material, or practice over a given period of time, adjusting for differences in the time of the costs.

Major Expansion means construction that involves the addition of over 15,000 square feet to an existing facility for new or existing program functions due to increases in the numbers of valid facility users or due to the changes in program functions impacting on programmatic space requirements.

Major Replacement means construction that involves replacement of an existing facility or portion thereof other than a facility component replacement or consolidation of existing facilities. The primary objective of such construction is to achieve a cost savings that otherwise may not be realized from other construction associated with improvements and repairs of a facility or portion thereof or additions or expansions.

New Starts means the construction of a new facility at a site where education program function(s) and non-temporary education facilities do not presently exist.

Secretary means the Secretary of the Interior, or an authorized representative.

Superintendent means the official in charge of a Bureau Agency Office or an authorized representative acting under delegated authority or a successor official.

Temporary Structure(s) means a facility intended for use on a temporary basis. Temporary structures may vary in quality and projected useful life. Temporary structures may be referred to as portables. Portables are of such size, dimensions and structure so as to be readily transportable and may be relocated as needed. Temporary structures may also be referred to as modulars. However, not all modular facilities are temporary structures. Some modular facilities are permanent structures.

Tribal Resolution means the formal manner in which the tribal government expresses its legislative will pursuant to its organic document. In the absence of such organic document, a written expression adopted pursuant to tribal practices will be acceptable.

Value engineering means an organized team study of construction project functions and components, during the project planning and design stage, to creatively generate alternatives which will satisfy the user's needs at the lowest life cycle cost. It will not sacrifice performance, reliability, quality, maintainability or safety.

§ 294.6 Assistance to Indian tribe(s) and Indian organization(s).

(a) Upon written request of an Indian tribe(s) or Indian organization(s), the Bureau shall provide technical assistance in applying for education facilities construction projects. Technical assistance may include:

(1) Assistance in obtaining and completing the application.

(2) Assistance in correcting identified deficiencies in the application.

(3) Assistance in filing an appeal under subpart D of this part.

(b) Any Bureau line officer shall make any information available to the applicant needed to prepare the application, correct deficiencies, or file an appeal except as exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or restricted under the Privacy Act or other applicable law.

Subpart B—Application Process

§ 294.7 Who may apply.

(a) Any Indian tribe(s) or Indian organization(s) may submit an application under the regulations in this part for an education facilities construction project for a contract or grant school. A Bureau line officer may also submit an application for a contract or grant school.

(1) The Indian tribe(s) or Indian organization(s) must control and manage the contract or grant school.

(2) Title to the land on which a contract or grant school is located must be vested in the Indian tribe or the United States; or, a lease for the useful life of the improvement must be entered into with the Indian tribe or the United States for the ground on which the education facilities construction project is located.

(b) A Bureau line officer may submit an application under the regulations in this part for an education facilities construction project for a Bureau school.

(c) An application for an education facilities construction project for an education program that has not been approved by the Director, OIEP, will not be considered under the regulations in this part. An education facilities construction project must be for a Bureau, contract or grant school.

(d) A Bureau, contract, or grant school must have a minimum current enrollment or projected enrollment of 25 students in grades K through 8 and/or 50 students in grades 9 through 12.

§ 294.8 Obtaining application materials.

Application forms for education facilities construction projects, instructions for completing the application, and related materials may be obtained from any Bureau line officer.

§ 294.9 Filing of applications and the deadline for filing.

(a) New or updated applications for education facilities construction projects will be rated and priority ranked for funding consideration at least once every three years.

(b) In February of a year when new applications for education facilities construction projects must be filed, the Assistant Secretary shall:

(1) Publish a notice in the **Federal Register**.

(2) Mail notices directly to all federally-recognized Indian tribes and all Bureau funded schools, whether Bureau, contract, or grant schools with a copy of this Part.

(c) The notice shall:

(1) Announce the next priority ranking process, the relevant procedures to be followed, and the deadline for filing applications for consideration.

(2) State how and where applications may be obtained as well as the name, address, and telephone number of a person who may be contacted for further information.

(d) A new or updated application for an education facilities construction project must be filed with the Director, OIEP, on or before June 1 in a year when new applications for education facilities construction projects will be accepted. If June 1 falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the first working day thereafter. Applications can be filed only:

(1) *By mail.* The applicant must send the application to the Director, OIEP, certified mail, return receipt requested, and the application must be postmarked no later than midnight on the deadline specified.

(2) *By personal delivery.* The application must be received in the Office of the Director, OIEP, no later than close of business on the deadline specified.

(e) Applications filed after the deadline specified in paragraph (d) of this section shall not be considered.

(f) The filing of more than one application for education facilities construction projects at the same project location is prohibited. Multiple applications will be consolidated and considered as one application.

§ 294.10 Emergency situations.

(a) An application for an education facilities construction project based on an emergency situation may be filed with the Director, OIEP, at any time. The application should state clearly that an emergency situation exists.

(b) Emergency situations are deemed to exist:

(1) If an education facility or a component of an education facility requires replacement or repair as a result of a major fire or natural disaster.

(2) If an education facility or a component of an education facility is subject to immediate closure based on a determination by the Bureau safety officer that facility conditions constitute an imminent danger to health and safety.

(c) Immediate action shall be taken to provide interim corrective action, such as, consolidating, curtailing, or providing alternative facilities for the education program subject to the availability of appropriated funds.

(d) The Director, OIEP, in consultation with the Indian tribe or tribal organization, if appropriate, the BIA safety officer and appropriate education and facilities personnel, shall determine what necessary permanent corrective action is required to eliminate the facility conditions that constitute the imminent danger to health and safety. The Director, OIEP, shall notify the Indian tribe or Indian organization of the determination.

(e) If it is determined that permanent corrective action requires major replacement, the Director, OIEP, will add the project to the end of the priority ranking list of education facilities construction projects prepared under § 294.18 of this part. Inclusion on the priority ranking list will be subject to approval by the Assistant Secretary.

§ 294.11 Contents of applications.

(a) An application for an education facilities construction project must be in writing and shall consist of:

(1) Application Form SF–424 which shall contain:

(i) Date application submitted.

(ii) Full name of the Indian tribe(s) for whom the application is filed, telephone number and mailing address.

(iii) Name and telephone number of a person knowledgeable about the application, who may or may not be the authorized representative, to be contacted on matters involving the application.

(iv) Name of the authorized representative, title, telephone number, signature of authorized representative and date signed.

(A) The individual named as the authorized representative will be considered the applicant and shall be recognized as fully controlling the application.

(B) A tribal resolution must accompany the application naming the individual as the authorized representative.

(C) All notices and correspondence relating to the application will be sent to the individual named as the authorized representative as applicant.

(D) The address submitted shall be considered the address of record. It shall be the applicant's responsibility to keep the Director, OIEP, advised of his or her current address.

(E) If the authorized representative changes, it is the responsibility of the Indian tribe(s) to notify the Bureau by tribal resolution of the change in authorized representative.

(v) A descriptive title of the proposed education facilities construction project.

(vi) Areas such as cities, counties, states, etc., affected by project, if applicable.

(vii) Congressional districts in which project and applicant are located, if known.

(2) Tribal resolution indicating review and approval of the application and support for the education facilities construction project. Applications without a tribal resolution will not be considered in the priority ranking process.

(3) The following information about the education facilities construction project relating to the criteria of Safety and Health Deficiencies and Environmental Deficiencies:

(i) If there is an existing facility, attach copies of any Indian Health Service, tribal sanitarian or health reports, safety reports, or any other reports such as state or county health department inspections.

(ii) If there is an existing facility, attach copies of any reports relating to non-compliance with applicable Federal, tribal or state environmental laws and regulations by the tribe, state, county or any Federal agency.

(4) The following information about the education facilities construction project relating to the criterion of Handicap Accessibility Deficiencies:

(i) If there is an existing facility, whether there are any handicap students enrolled in the school, what types of handicaps do they have and in what grades are they?

(ii) If there is an existing facility, whether there are students who may potentially be enrolled in the school, what types of handicaps do they have and in what grades will they be?

(5) The following information about the education facilities construction project relating to the criteria of Programmatic Space Needs, Space Utilization Efficiency, and Enrollment/Population Trends:

(i) Is this application for a new education program or does this application include a education program expansion or consolidation? If either, describe briefly. Has this education program or education program expansion or consolidation been approved by the Director, OIEP?

(ii) If there is an existing facility, a simple diagram of the floor plan of the education facility. This need not be an architectural drawing. The fire evacuation diagrams that are posted in the facility are acceptable. On the diagram a letter designation (A, B, C, etc.) should be assigned to each classroom, office, or other area.

(iii) A listing of each classroom, office, or other area, by letter designation assigned in paragraph (a)(5)(ii) of this section, its function in the facility, and its dimensions.

(iv) If there is an existing education facility, describe the attendance boundaries established under § 36.11(c) of Part 36 of this chapter and attach a map of the reservation or service area which shows the location of the education facility and shows the attendance boundaries of the facility.

(v) If there is not an existing education facility, describe the

proposed attendance boundaries and attach a map of the reservation or service area which shows the proposed location of the education facility and shows the proposed attendance boundaries.

(vi) Outline of school enrollment characteristics and data including:

(A) Present or estimated total enrollment and enrollment by grade.

(B) If there is an existing education facility, enrollment for the past six (6) years, or number of years available, by total and by grade.

(C) Estimate of enrollment by year for the next eight (8) years by total and by grade.

(D) Source and/or reasons for any student population growths.

(E) Estimate of the number of students residing within the attendance boundaries but enrolled in other schools.

(F) If there is an existing facility, the number of students attending the education facility, but residing outside of attendance boundaries.

(6) The following information about the education facilities construction project relating to the criterion of Cooperative and/or Consolidation Arrangements:

(i) Whether there are any plans for school consolidations, grade level reconfiguration or cooperative education arrangements with other Bureau, tribal, or public schools. If so, briefly describe.

(ii) If application includes a proposed cooperative and/or consolidation arrangement with another Indian tribe or Indian organization or governmental unit list:

(A) The name of other Indian tribe(s), or Indian organization(s) or governmental unit(s).

(B) A tribal resolution(s) of support from the other Indian tribe(s) or a proposed memorandum of agreement from the other governmental unit(s).

(iii) If application includes a proposed cooperative and/or consolidation arrangement with another Indian tribe or Indian organization or governmental unit, describe briefly the intended benefit of the arrangement.

(7) The following information about the education facilities construction project relating to the criterion of Availability of Alternative Facilities:

(i) Name all other elementary and secondary schools, whether Bureau, tribal or public, within the attendance boundary described in paragraphs (a)(5)(iv) or (v) of this section and their round trip distance from the education facility or proposed education facility in miles and bus travel time. Also, show their location on the map attached in accordance with paragraphs (a)(5) (iv) or (v) of this section.

(b) Applicants may also include:

(1) A brief Program Narrative, not more than two pages, which addresses any other problems, issues, or information relative to this project including any local economic development plans which may impact on primary and secondary education needs.

(2) Photographs of the existing facility or site.

(c) The following information or categories of information from Bureau records will be obtained by the Director, OIEP, and included in the application file to be considered by the Evaluation Committee.

(1) Information relating to non-compliance of the facility with applicable Federal, tribal or state health and safety codes and standards.

(2) Information relating to non-compliance of the facility with applicable Federal, tribal, or state environmental laws and regulations.

(3) Information relating to non-compliance of the facility with the Uniform Federal Accessibility Standards, Section 504 of the Rehabilitation Act of 1974, and the Americans with Disabilities Act of 1990.

(4) Information relating to the condition of existing utilities and site improvements, including but not limited to renovation, repairs, improvements or expansions.

(5) Information relating to the age of the facility and the condition of the facility, including but not limited to whether the structures are temporary structures and what the remaining useful life of the facility should be.

(6) Information relating to operation and maintenance costs of the facility.

(7) Information relating to the amount of available space at the facility and the space utilization efficiency at the facility.

(8) Information relating to school enrollment at the facility and census figures for the reservation or services population.

(9) Information relating to the availability of alternative facilities.

Subpart C—Priority Ranking

§ 294.12 Priority ranking criteria.

Applications shall be rated on the basis of need which shall be determined in accordance with the criteria and corresponding point values set forth below. In rating applications, the Bureau will use information in the Bureau facilities inventory and will consider information submitted by the applicant and, when appropriate, tribe, state, or other government agency reports.

(a) *Safety and Health Deficiencies* (Maximum Possible Points—30). This criterion will be used to evaluate deficiencies related to violations of applicable Federal, tribal or state health and safety codes and standards.

(1) Health and safety deficiencies may include occupational safety and health standards violations or deficiencies, national fire code and structural fire prevention guidelines deficiencies, uniform building code deficiencies, plumbing and mechanical deficiencies, electrical deficiencies, and food service sanitation.

(2) The seriousness or criticalness of health and safety code violations or deficiencies will determine the number of points received in rating projects under this criterion as opposed to the actual number of violations or deficiencies. More emphasis will be given to health and safety code violations and deficiencies which cannot be corrected other than through major replacement. Health and safety code violations or deficiencies of an operational or procedural nature, such as improper storage of food or cleaning products, will not receive points.

(b) *Environmental Deficiencies* (Maximum Possible Points—8). This criterion will be used to evaluate the deficiencies related to violations of applicable Federal, tribal or state environmental laws and regulations relating to air quality, solid waste disposal, waste water, drinking water, and any other environmental requirements.

(1) Environmental deficiencies may include occupational safety and health standards code violations or deficiencies related to the environment, such as exposed asbestos, and environmental protection agency code deficiencies or violations.

(2) The seriousness or criticalness of environmental code violations or deficiencies, rather than the actual number of violations or deficiencies, will determine the number of points received by the projects under this criterion. More emphasis will be given to environmental deficiencies which cannot be corrected other than through major replacement. Environmental code violations or deficiencies of an operational or procedural nature, such as trash cans left where animals can get into them and spread the contents, will not result in points.

(c) *Handicap Accessibility Deficiencies* (Maximum Possible Points—5). This criterion will be used to evaluate the deficiencies related to handicap accessibility.

(1) Handicap accessibility deficiencies may include violations under the Uniform Federal Accessibility Standards, violations under Section 504 of the Rehabilitation Act of 1974, and violations under the Americans with Disabilities Act of 1990.

(2) Handicap accessibility deficiencies needing major replacement to correct will receive more points under this criterion than those that can be corrected through facilities improvement and repair projects. As an example, installing handicap ramps can usually be done as a facilities improvement and repair project. However, the structure of a building may prevent the installation of an elevator to give handicap access to a second floor in a two-story building and may require major replacement of the building to remedy. Whether there are handicapped students or the potential for handicapped students to attend the education facility may also result in points. However, the number of such students at a particular education facility will not impact on the number of points received.

(d) *Condition of Existing Utilities and Site Improvements* (Maximum Possible Points—10). This criterion will be used to evaluate the physical condition and/or availability of utility systems and site improvements at an existing or proposed site.

(1) The existence or condition of utilities and site improvements, such as water, sewer, electricity, gas, telephone, solid waste disposal, access roads, or available land, will be considered under this criterion.

(2) The poorer the conditions or the lack of availability of utilities and site improvements, the higher will be the points an education facilities construction project will receive under this criterion. The conditions of existing utilities and site improvements can directly impact how extensive an education facilities construction project may have to be. Any addition or expansion to an existing education facility may require the upgrading of some of the utilities. The conditions or lack of availability may also prohibit any addition or expansion at a particular site.

(e) *Age of Existing Facilities* (Maximum Possible Points—7). This criterion will be used to evaluate the remaining useful life of a facility proposed for an education facilities construction project.

(1) The age of existing facilities or remaining useful life will be considered under this criterion. The quality of initial construction, the type of use of the building and how well the building has been maintained all impact on the useful life.

(2) The older the existing facility, the more points an education facilities construction project will receive. However, the actual condition of the facility or facilities will also be considered.

(f) *Operation and Maintenance Costs* (Maximum Possible Points—5). This criterion will be used to evaluate the relative costs to operate and maintain an existing facility.

(1) The cost of operation and maintenance will be considered under this criterion.

(2) The more costly the facility or facilities are to operate and maintain the more points an education facilities construction project will receive.

(g) *Programmatic Space Needs* (Maximum Possible Points—12). This criterion will be used to evaluate the deficiencies related to violations of applicable Federal, tribal, or state standards, such as school accreditation standards, office space standards, education space guidelines, and other applicable space standards including Part 36 of this Chapter.

(1) Only education programs approved by the Director, OIEP, will be considered in evaluating programmatic space needs. Programmatic space needs as a result of program expansions, including additional grades, program(s), or consolidation(s), will not be considered unless the program expansion has been approved by the Director, OIEP. The application for an education facility construction project, excluding the unapproved program expansion space needs may, however, be considered. In addition the current, estimated, or projected future enrollment of an approved education program based on population trends and effective use of existing space may be considered in evaluating programmatic space needs. Temporary structures will not be considered in determining current available space.

(2) The greater the additional programmatic space needs are for approved education programs, the higher the number of points an education facilities construction project will receive.

(h) *Space Utilization Efficiency* (Maximum Possible Points—6). This criterion will be used to evaluate the degree to which an existing facility or facilities has excess and underutilized space resulting in decreased space utilization efficiency.

(1) Only education programs approved by the Director, OIEP, will be considered in evaluating space utilization efficiency. Efficiency in space utilization based on program expansions, including additional grades, program(s), or consolidation(s), will not be considered unless the program expansion has been approved by the Director, OIEP. The application for an education facility construction project excluding the impact on space utilization efficiency of the unapproved program expansion may, however, be considered. Temporary structures will not be considered in determining current available space.

(2) The more excess or underutilized space in an existing facility or facilities based on approved education programs, the higher the number of points an education facilities construction project will receive. Due to the original design of the facility or facilities, major replacement of the education facility or facilities may be the only way in which excess or underutilized space can be eliminated. Consequently, the lesser the space utilization efficiency of the existing facility or facilities, the greater the number of points the education facilities construction project may receive.

(i) *Enrollment/Population Trends* (Maximum Possible Points—5). This criterion will be used to evaluate fluctuations or changes in the number of facility users and the impact the changes will have on facility needs.

(1) Only enrollment trends of education programs approved by the Director, OIEP, will be considered. Increased enrollment based on program expansions, including additional grades, program(s), or consolidation, will not be considered unless the program expansion has been approved by the Director, OIEP. The application for an education facility construction project excluding the impact of the unapproved program expansion may, however, be considered. The population trend on the reservation or within the service area will also be considered.

(2) An enrollment trend for an approved education program showing an increase over the last few years will result in an education facilities construction project receiving more points under this criterion. A projected continuing enrollment increase based on population trends may also result in higher points. Increased education needs on a reservation within a service area based on increase in population may also result in points under this criterion.

(j) *Cooperative and/or Consolidation Arrangements* (Maximum Possible Points—7) This criterion will be used to evaluate proposed cooperative agreements, joint ventures or consolidation arrangements with

Bureau, tribal, state and/or private entities which would benefit the education facility construction project and/or the education program.

(1) The benefit or potential benefit to the education facility construction project and/or the education program of a proposed cooperative agreement, joint venture or consolidation arrangement will be considered under this criterion. A proposed cooperative and/or consolidation arrangement may be considered under this criterion even though the resulting education program has not been approved by the Director, OIEP.

(2) Education facilities construction projects demonstrating the potential for decreased construction costs or operation and maintenance costs will receive higher points under this criterion. The potential for increased education program delivery without a corresponding increase in cost may also result in points. However, cooperative and/or consolidation arrangements which show no potential for benefit, whether the benefit is increased or expanded education program delivery, or decreased construction or decreased operation and maintenance costs, may not receive any points under this criterion. It is the potential benefit of, not just the proposal of a cooperative and/or consolidation arrangement that will be considered.

(k) *Availability of Alternative Facilities* (Maximum Possible Points—5). The criterion will be used to evaluate whether alternative facilities are available.

(1) The availability of alternative education facilities within a reasonable bus ride time from the residence of the students to school will be considered under this criterion.

(i) Both the age of the students and the climatic conditions or terrain directly impacting on year-round accessibility to the residence of students or the alternative facilities will be taken into account in evaluating the availability of alternative facilities.

(ii) Other Bureau funded primary or secondary schools, whether Bureau operated, contract or grant schools, as well as primary or secondary public schools will be considered in evaluating the availability of alternative facilities.

(2) Applications for education facilities construction projects where there are no available alternative facilities will receive the most points under this criterion.

§ 294.13 Technical review of applications by Director, OIEP.

(a) If an application for an education facilities construction project is filed after the deadline specified in § 294.9(d), the Director, OIEP, shall notify the applicant in writing by certified mail, return receipt requested, that the application was received after the deadline and will not be considered in the priority ranking process.

(b) The Director, OIEP, will review all applications for education facilities construction projects filed by the deadline specified in § 294.9(d) for technical completeness. The Director, OIEP, will not evaluate the information contained in the applications.

(c) If the Director, OIEP, determines that an application for an education facilities construction project is incomplete, he or she shall:

(1) Immediately notify the applicant in writing, by certified mail, return receipt requested.

(2) Identify the specific deficiencies which must be satisfied to complete the application.

(d) An applicant will have 30 days from receipt of the letter identifying deficiencies in the application in which to submit to the Director, OIEP, additional information to rectify the deficiencies in the application.

(1) If the applicant furnishes additional information to the Director, OIEP, which rectifies the deficiencies in the application, the Director, OIEP, shall:

(i) Notify the applicant in writing that the additional information rectifies the deficiencies in the application.

(ii) Advise the applicant that the application will be considered in the priority ranking process.

(2) If the applicant furnishes additional information to the Director, OIEP, which does not rectify the deficiencies in the application, the Director, OIEP, shall:

(i) Notify the applicant in writing by certified mail, return receipt requested.

(ii) Advise the applicant of the continued or remaining deficiencies in the application.

(iii) Advise the applicant whether or not the application will be considered in the priority ranking process.

(3) If the applicant does not furnish additional information, the Director, OIEP, shall take no further action.

(e) Except as provided in paragraph (f) of this section, incomplete applications for education facilities construction projects filed by the deadline specified in § 294.9(d) will be considered in the initial review whether additional information is submitted by the applicant or not. An incomplete application may adversely impact on the rating of the education facilities construction project.

(f) An incomplete application will not be considered if:

(1) The application is for an education facilities construction project for an education program that has not been approved by the Director, OIEP; or

(2) There is no tribal resolution of review and approval of the application.

(g) The Director, OIEP, shall obtain the additional necessary or relevant information contained in Bureau records as described in § 294.11(c) and include the information with the applications for education facilities construction projects filed by applicants.

§ 294.14 Establishment of Evaluation Committee and initial review of applications.

(a) The Director, OIEP, shall establish an Evaluation Committee for the purposes of reviewing and rating applications for education facilities construction projects. The Evaluation Committee shall be comprised of appropriate Bureau personnel, including education personnel and facilities personnel. The Director, OIEP, may also include appropriate personnel from the United States Department of Education on the Evaluation Committee.

(b) The Evaluation Committee shall conduct an initial review of all applications filed by the deadline specified in § 294.9(d) that have not been rejected by the Director, OIEP, as incomplete.

(c) The Evaluation Committee shall consider in the initial review of applications information contained in the applications as well as relevant information contained in Bureau records.

(d) The Evaluation Committee shall rate the applications for education facilities construction projects in accordance with the criteria specified in § 294.12.

(e) An individual on the Evaluation Committee shall not review and rate an application for education facilities construction projects filed:

(1) By or for the Indian tribe in which he or she is a member; the Indian tribe in which he or she's spouse is a member; or, the Indian tribe in which a parent is, or was, a member.

(2) For the education facility where he or she is employed or over which he or she is the official in charge of or has any line authority over the education functions at that facility.

§ 294.15 Notification of preliminary rating.

(a) The Director, OIEP, shall select those applications rated highest for further consideration and application validation based on the initial review

and rating by the Evaluation Committee. The actual number of applications to be selected for further consideration and application validation will be determined by the Director, OIEP, and may vary from one priority ranking process to another.

(b) The Director, OIEP, shall notify those applicants whose projects were selected for further consideration and application validation of the status of their applications. The notice shall:

(1) Be in writing and provide the actual number of points received under each criterion with an explanation of the reasons for the ratings.

(2) State what the cutoff rating for further consideration and application validation is.

(c) The Director, OIEP, shall notify those applicants whose projects were not selected for further consideration and application validation, that their applications will not be priority ranked. The notice shall:

(1) Be in writing and sent by certified mail, return receipt requested.

(2) Provide the actual number of points received under each criterion with an explanation of the reasons for the ratings.

(3) State what the cutoff rating for further consideration and application validation is.

§ 294.16 Application validation and final review by the Evaluation Committee.

(a) In consultation with the applicant and appropriate Bureau personnel, the Director, OIEP, shall validate the application and determine the actual needs of the project.

(b) After completion of the application validations under paragraph (a) of this section, the Director, OIEP, shall convene the Evaluation Committee established under § 294.14(a) for the purposes of a final review and rating of those applications which have been validated.

(c) The Evaluation Committee shall review the entire record for all applications that have been validated including, but not limited to, the information contained in the application, relevant information contained in Bureau records, and the results of the application validation. The Evaluation Committee shall again rate the applications based on the criteria specified in § 294.12.

§ 294.17 Ranking of applications and notification of ranking.

(a) Based on the ratings by the Evaluation Committee, the Director, OIEP, shall rank the education facilities construction projects and identify those projects which will be added to the priority ranking list.

(b) The Director, OIEP, shall notify all applicants whose projects will be added to the priority ranking list to be prepared under § 294.18. The notice shall:

(1) Be in writing and sent by certified mail, return receipt requested.

(2) Describe the education facilities construction projects to be added to the priority ranking list. The projects to be listed will be based on a determination of actual need by the Director, OIEP and may differ from the project as applied for by the applicant.

(c) The Director, OIEP, shall notify all applicants whose projects did not rank high enough to be added to the priority ranking list to be prepared under § 294.18. The notice shall:

(1) Be in writing and sent by certified mail, return receipt requested.

(2) Provide the actual number of points received under each criterion with an explanation of the reasons for the ratings.

(3) State what the cutoff rating is for addition to the priority ranking list prepared under § 294.18.

§ 294.18 Preparation of the priority ranking list.

Each year the Director, OIEP, shall update the priority ranking list of education facilities construction projects by:

(a) Removing any projects from the previously published list that have received full funding;

(b) Retaining in order any projects from the previously published priority list prepared under this Part that have not received full funding;

(c) Adding any projects which may have been determined necessary to correct an emergency situation under § 294.10(e); and

(d) Adding any projects which have been identified for addition to the priority ranking list under § 294.17(a). Projects will be identified for addition to the priority ranking list under § 294.17(a) at least once every three (3) years.

§ 296.19 Approval and publication in the Federal Register of the priority ranking list.

(a) The Director, OIEP, shall forward the priority ranking list of education facilities construction projects to the Assistant Secretary for consideration.

(b) The Assistant Secretary, upon approval, shall:

(1) Publish the priority ranking list of education facilities construction projects in the **Federal Register**. Publication of the priority ranking list in the **Federal Register** shall constitute a final agency action and may not be appealed.

(2) Submit the priority ranking list of education facilities construction projects to Congress with the budget.

(b) The Assistant Secretary will not consider petitions to include additional education facilities construction projects to the priority ranking list or change the ranking of a project on the list.

(c) Funding requests by the Department for education facilities construction projects will be based on the priority ranking list published in the **Federal Register**. However, actual funding for construction of the projects on the priority ranking list is subject to the availability of funds.

Subpart D—Appeals

§ 294.20 Appeals.

(a) Any decision or action taken by a Bureau line officer under this part may be appealed only as provided in this part and only by or on behalf of a person adversely affected by the action or decision.

(b) Unless otherwise provided in the regulations in this Part, an appeal from any decision or action taken by a Bureau line officer under this Part, must be in writing and a notice of appeal must be filed within 30 days of the notice or notification having been received by an applicant or of an action having been taken by a Bureau line officer.

(c) A statement of reasons shall be filed by the appellant in every appeal and shall include or incorporate all supporting documents.

(1) The statement of reasons may be filed with the notice of appeal.

(2) If the statement of reasons is not filed with the notice of appeal, the appellant shall file a separate statement of reasons within 30 days after the notice of appeal was filed.

(d) Any notice or notification to an applicant under this part is considered to have been received and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of personal delivery; or

(3) Of the return by the post office of an undelivered certified letter.

(e) In computing the 30 day appeal period, the count begins with the day following the date the notice or notification was received or was considered to have been received, or the action occurred and continues for 30 calendar days. If the 30th day falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the first working day thereafter.

(f) The Bureau line officer with whom a notice of appeal is filed may, upon

written request and a showing of good cause, extend the time for filing a statement of reasons to 60 days from the filing of the notice of appeal. No extension of time shall be granted for the filing of a notice of appeal.

§ 294.21 Appeals from actions or decisions by Agency Superintendents for Education or Area Education Programs Administrators.

(a) An appeal from an action or decision by an Agency Superintendent for Education or Area Education Programs Administrator must be filed with the Agency Superintendent for Education or Area Education Programs Administrator who issued the decision or took the action.

(b) The Agency Superintendent for Education or Area Education Programs Administrator shall acknowledge in writing receipt of the notice of appeal. Within ten (10) days after receipt of the statement of reasons, the Agency Superintendent for Education or Area Education Programs Administrator shall forward the appeal to the Director, OIEP, for action together with any relevant information or records and his or her recommendation.

(c) The Director, OIEP, will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Director, OIEP, shall make a decision on the appeal from an action or decision by an Agency Superintendent for Education or an Area Education Programs Administrator within 60 days of his or her receipt of the appeal and shall notify the appellant in writing by certified mail, return receipt requested, of the decision.

§ 294.22 Appeals from actions or decisions by Superintendents.

(a) An appeal from an action or decision by a Superintendent must be filed with the Superintendent who issued the decision or took the action.

(b) The Superintendent shall acknowledge in writing receipt of the notice of appeal. Within ten (10) days after receipt of the statement of reasons, the Superintendent shall forward the appeal to the Area Director for action together with any relevant information or records and his or her recommendation.

(c) The Area Director will consider the record as presented together with such additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Area Director shall make a decision on the appeal from the action or decision by a Superintendent within 60 days of his or her receipt of the appeal and shall notify the appellant in writing by certified mail, return receipt requested, of the decision.

§ 294.23 Appeals from actions or decisions by Area Directors.

(a) An appeal from an action or decision by an Area Director, whether originally or on an appeal, must be in writing and must be filed with the Area Director who issued the decision or took the action.

(b) The Area Director shall acknowledge in writing receipt of the appeal. Within ten (10) days after receipt of the statement of reasons, the Area Director shall forward the appeal to the Assistant Secretary for action together with any relevant information or records and his or her recommendation.

(c) The Assistant Secretary will consider the record as presented together with any additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Assistant Secretary shall make a decision on the appeal from an action or decision by an Area Director within 60 days of his or her receipt of the appeal that shall be final for the Department and shall so state in the decision. The appellant will be notified in writing of the decision.

§ 294.24 Appeals from actions or decisions by the Director, OIEP, or the Commissioner.

(a) An appeal from an action or decision by the Director, OIEP, or the Commissioner, whether originally or on an appeal, must be filed with the Director, OIEP, or the Commissioner, as appropriate.

(b) The Director, OIEP, or the Commissioner, as appropriate, shall acknowledge in writing receipt of the notice of appeal. Within 10 days after receipt of the statement of reasons, the Director, OIEP, or the Commissioner shall forward the appeal to the Assistant Secretary for action together with any relevant information or records and his or her recommendation.

(c) The Assistant Secretary will consider the record as presented together with any additional information as may be considered pertinent. Any additional information relied upon shall be specifically identified in the decision.

(d) The Assistant Secretary shall make a decision on the appeal from an action or decision by the Director, OIEP, or the Commissioner within 90 days of his or her receipt of the appeal which shall be final for the Department and shall so state in the decision. The appellant will be notified in writing of the decision.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–24973 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
October 13, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization; Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: November 1–3, 1993, 9 a.m. to 5:30 p.m.; the Ramada Hotel Classic, 6815 Menaul NE., Albuquerque, New Mexico, (505) 881–0000. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Sam Adams, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 320 SIB; 1849 C Street NW., Washington, DC 20240; Telephone number (202) 208–2631.

SUPPLEMENTARY INFORMATION: The Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization will discuss priorities for organizational and management system changes proposed for the Bureau of Indian Affairs at this meeting. Each of the three Work Groups of the Task Force will review and reassess their prior recommendations based on the National Performance Review Report, "Creating a Government that Works Better & Costs Less," Public Law 103–62, "the Government Performance and Results Act," and President Clinton's budget deficit reduction targets and initiatives. Bureau of Indian Affairs proposals for restructuring the portions of the Central Office will be presented to the Task Force for action. The Task Force will proceed with its identification of BIAM and CFR changes based on the Tribal survey forms received, and it will continue work on the Tribal Budget System. Public attendance and participation in this meeting are encouraged, and time for public comments has been scheduled for Wednesday, November 3, 1993, at 9:15 a.m.

Dated: October 4, 1993.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–25109 Filed 10–12–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
October 13, 1993

Part IV

Department of Housing and Urban Development

Office of the Secretary

Federal National Mortgage Association and Federal Home Loan Mortgage Corporation; Interim Housing Goals; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3631; FR–3524–N–01]

Federal National Mortgage Association; Interim Housing Goals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of interim housing goals.

SUMMARY: This Notice sets forth three separate interim goals, for calendar years 1993 and 1994, established by the Secretary of Housing and Urban Development for the Federal National Mortgage Association's purchase of mortgages on (1) housing for low- and moderate-income families, (2) housing located in central cities, and (3) housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. This Notice describes the background, operation and statutorily prescribed factors considered in the establishment of the goals—along with the goals themselves—as well as the general and specific requirements for measuring performance under the goals, relevant definitions and reporting requirements.

DATES: Effective date: October 13, 1993.

Comments due date: The Secretary will accept comments from the public on an open docket while it is developing the regulation containing the annual goals and future implementation requirements for 1995 and thereafter.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Ben E. Laden, Director, Financial Institutions Regulation Staff, telephone (202) 708–1464 or Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons (TDD) is available at (202) 708–0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Housing and Urban Development ("the Secretary") is required to establish certain annual goals for mortgage purchases by the Federal National Mortgage Association ("FNMA" or "enterprise") and the Federal Home Loan Mortgage Corporation ("FHLMC" or "enterprise") on housing, under Part 2, Subpart B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("the Act"), enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and codified at 12 U.S.C. 4561–67. Specifically, the Act requires that the Secretary, after consideration of certain prescribed factors for each of the goals, establish annual goals for purchases of mortgages on housing for low- and moderate-income families, housing located in central cities, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families.

For the transition period of calendar years 1993 and 1994, the Act establishes target percentage amounts for purchases by FNMA and FHLMC of mortgages on housing for low- and moderate-income families and housing located in central cities and specific dollar amounts for purchases of mortgages on special affordable housing. The Act requires the Secretary to establish interim goals covering the transition period for FNMA and FHLMC in relation to the targets. The Act provides that where an enterprise is not meeting the target(s) for the purchase of mortgages on housing for low- and moderate-income families and/or housing located in central cities as of January 1, 1993, the Secretary shall establish the goal(s) so that the enterprise improves its performance relative to the target(s) and, "to the maximum extent feasible," meets the target(s) by December 31, 1994, the end of the transition period. (Sections 1332(d)(2)(A) and 1334(d)(2)(A).[1]) Where an enterprise is meeting the target(s) as of January 1, 1993, the Act requires that the Secretary establish the goals for the period so that the enterprise improves its performance relative to the target(s). (Sections 1332(d)(2)(B) and 1334(d)(2)(B).) The Act contains no similar requirement for the establishment of the special affordable housing goals.

The Act provides that the Secretary must establish any requirements necessary to implement the transition provisions of the Act, including housing goals, by notice after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. (Sections 1332(d)(3), 1333(d)(4), and 1334(d)(4).) The Secretary provided FNMA with an opportunity to review and comment on this Notice on July 22, 1993. The requirements in this Notice were revised following review of the comments. If any requirements for the interim goals contained in this Notice require revision, the Secretary may revise the goals by Notice in the **Federal Register** after providing the enterprises with an opportunity to review and comment not less than 30 days prior to publication.

The Act requires the Secretary to move expeditiously to establish these interim goals. Because this legislative scheme is new, many of the assumptions and interpretations embodied in this Notice are likely to be reconsidered, depending on the performance of FNMA under these goals and other relevant matters. Future goals and requirements are likely to vary substantially from those contained in this Notice. Accordingly, these interim goals and the provisions of this Notice apply only to activities of FNMA under the goals during the transition period.

The Secretary shall issue final regulations necessary to implement Part 2 of the Act, including the housing goals for 1995 and thereafter and excluding the interim housing goals, within 18 months of enactment of the Act. (Section 1349.[2]) The Act, at section 1331(c), authorizes the Secretary to adjust any goal established by the Secretary from year to year by regulation, except as otherwise provided under the Act.

All three sets of interim goals for FNMA are combined in this Notice due to similarities in the goals and the requirements for their implementation. Where the goals or the requirements differ, this Notice discusses such matters separately. In a similar but separate Notice, the Secretary has established the interim goals for FHLMC.

The Goals

After consideration of the applicable factors provided in the Act, *see below*, the Secretary establishes the interim goals as follows:

[1] Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331–38 of that Act are codified at 12 U.S.C. 4561–67.

[2] Codified at 12 U.S.C. 4589.

Housing for Low- and Moderate-Income Families

The target set forth in the Act for FNMA's purchases of conventional mortgages financing housing for low- and moderate-income families for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FNMA's mortgage purchases for each year. (Section 1332(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 30 percent; the annual goal for 1994 is established at 30 percent.

Housing Located in Central Cities

The target set forth in the Act for FNMA's purchases of conventional mortgages financing housing located in central cities for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FNMA's mortgage purchases for each year. (Section 1334(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 28 percent; the annual goal for 1994 is established at 30 percent.

Special Affordable Housing

The special affordable housing goal set forth in the Act at section 1333(d)(1), and established by the Secretary under this Notice for the two year period 1993–94 for FNMA's purchases of conventional mortgages on rental and owner-occupied housing meeting the then existing unaddressed needs of, and affordable to, low-income families in low-income areas and very-low income families shall include mortgage purchases of not less than two billion dollars ($2,000,000,000) "above and beyond [FNMA's] existing performance and commitments."[3]

In establishing these goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary has determined, under the factors provided in the Act, to set the goals at levels which will require FNMA to stretch its efforts to purchase mortgages and provide financing meeting the goals during the transition period of 1993 and 1994.[4]

[3] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[4] *See id.* at 35 (1992) ("the Committee fully expects [FNMA and FHLMC] will need to stretch their efforts to achieve [the low- and moderate-income goal]") and *id.* at 36 ("The purposes of the special affordable housing goal are two-fold: (1) to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments; and (2) to encourage [FNMA and FHLMC] to make such purchases an integral part of their business through the development of new product lines, the creation of new business relationships, the building of institutional capacity and other innovative activities.")

Goals for Housing for Low- and Moderate-Income Families

Section 1332(b) of the Act requires the Secretary to consider national housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the sound financial condition of the enterprises, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing for low- and moderate-income families. Performance under the goals for the purchase of mortgages on housing for low- and moderate-income families is to be evaluated by the Secretary based on the number of dwelling units financed by such mortgages as a percentage of the total number of units financed by mortgages purchased by FNMA. (Section 1332(d)(1).)

To determine whether owner-occupied dwelling units are affordable to low- or moderate-income families and count toward achievement of these goals, the Act provides, at section 1332(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families (sections 1332(c)(1)(B)(i) and 1303(8)(B) and (10)(B)[5]) shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- or moderate-income families. (Section 1332(c)(1)(B)(ii).) Under the Act, a rent level is affordable to low- or moderate-income families if such rent, as adjusted for unit size as measured by the number of bedrooms, does not exceed 30 percent of the maximum income level for the particular low- or moderate-income classification. (Section 1332(c)(2).)

Section 1332(a) of the Act provides that the Secretary may establish separate subgoals within the goals for housing for low- and moderate-income families. Thus, the Secretary could, for example, establish a separate subgoal for housing for low-income families. Pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of subgoals under this section. This Notice does require FNMA to report separately on dwelling units for low-income families and for moderate-income families.

[5] Section 1303 is codified at 12 U.S.C. 4502.

Central Cities Housing Goals

Section 1334(b) of the Act, in part, requires the Secretary to consider urban housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the enterprises' sound financial condition, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing located in central cities. Performance under the goals for housing located in central cities is to be evaluated by the Secretary based on the number of dwelling units located in central cities that are financed by mortgages purchased by FNMA, as a percentage of the total number of units financed by mortgages purchased by FNMA. (Section 1334(d)(1).) Section 1334(d)(3) of the Act defines "central city" as "any political subdivision designated as a central city by the Office of Management and Budget."

Section 1334(a) of the Act also requires the Secretary to establish goals for FNMA's purchase of mortgages on housing located in rural and other underserved areas. The Act does not require that the Secretary establish these goals for the transition period and neither HUD nor the enterprises have experience with such goals. Accordingly, pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of other goals under this section while issuing interim central cities goals under section 1334(d)(2).

Special Affordable Housing Goal

Section 1333(a)(1) of the Act provides that the Secretary "shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families." In establishing the goal, the Secretary is required to consider data submitted in connection with the goal for previous years, the performance and effort of the enterprise in achieving the goal in previous years, national housing needs, the ability of the enterprise to lead the industry, and the need to maintain the enterprise's sound financial condition. (Section 1333(a)(2).)

Under the special affordable housing goal, the Secretary will evaluate

FNMA's performance based on the dollar amount of mortgage purchases that meet the requirements of the Act and this Notice. Performance is not measured—as under the other housing goals established under the Act—in terms of the percentage of dwelling units financed.

The Act requires that the Secretary establish the special affordable housing goals at no less than "1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year." (Section 1333(a)(1).) During the two-year transition period beginning on January 1, 1993, the special affordable housing goal for FNMA must "include mortgage purchases of not less than $2,000,000,000 (for such 2-year period), with one-half of such purchases [$1,000,000,000] consisting of mortgages on single family housing and one-half [$1,000,000,000] consisting of mortgages on multifamily housing." (Section 1333(d)(1).) Under this Notice, the Secretary is requiring FNMA to purchase mortgages totalling at least these minimum dollar amounts during the transition period of 1993–1994, above and beyond FNMA's existing performance and commitments.[6] The special affordable housing goal for FNMA for 1993 and 1994, therefore, requires $2,000,000,000 in mortgage purchases in addition to the amount of existing business which would have qualified under the goals; for purposes of these goals existing business shall be based on performance in 1992, the year before the housing goals became effective. The statute requires achievement of this goal by December 31, 1994. (Section 1333(d)(1).) To meet these special affordable housing needs, FNMA should move expeditiously to meet the goal and should, in any event, purchase a significant amount of mortgages qualifying under this goal in 1993.

The Act and this Notice require that the goals for mortgage purchases financing multifamily housing and the goals for mortgage purchases financing single family housing under this goal be subdivided further into subgoals to reach particular categories of housing for families at lower income levels. Thus, the Act requires that, for multifamily mortgage purchases by FNMA to be counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of such purchases must comprise mortgages on multifamily housing where dwelling units are affordable to low-income families (families whose incomes do not exceed 80 percent of area median income). (Section 1333(d)(3)(A)(i).) The remaining 55 percent of the dollar volume of multifamily mortgages purchased must comprise mortgages on multifamily housing in which either: (1) "At least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent" of area median income (section 1333(d)(3)(A)(ii)(I)); or (2) "at least 40 percent of the units are affordable to very low-income families" (families whose incomes do not exceed 60 percent of area median income) (section 1333(d)(3)(A)(ii)(II)). The Act provides that only those portions of mortgages on multifamily properties that are attributable to units affordable to low-income families shall contribute to the achievement of this goal. (Section 1333(d)(3)(C).)

The Act requires that, for mortgage purchases financing single family housing purchased by FNMA counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of single family mortgages comprise mortgages of low-income families (families whose incomes do not exceed 80 percent of area median income) "who live in census tracts in which the median income does not exceed 80 percent of the area median income." (Section 1333(d)(3)(B)(i).) The remaining 55 percent of the dollar volume of single family mortgage purchases must comprise mortgages of very low-income families (families whose incomes do not exceed 60 percent of area median income). (Section 1333(d)(3)(B)(ii).)

The Act sets forth certain specific requirements for evaluating FNMA's performance in meeting the special affordable housing goal. To determine whether owner-occupied dwelling units are affordable to very low- or low-income families and qualify toward achievement of this goal, the Act provides, at section 1333(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families, shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- and very low-income families (section 1333(c)(1)(B)) with adjustments for unit size as measured by the number of bedrooms (sections 1333(c)(1)(B)(ii) and (c)(2)). Under the Act, a rent level is affordable to a family if it does not exceed 30 percent of the maximum income level for the particular income category. (Section 1333(c)(2).)

In evaluating FNMA's performance in achieving this goal, the Act requires the Secretary to give full credit toward achievement of the special affordable housing goal for: (1) The purchase or securitization of federally related mortgages that cannot be readily securitized through the Government National Mortgage Association (GNMA) or another Federal agency, where FNMA's participation substantially enhances the affordability of the housing subject to such mortgages,[7] and the mortgages are on housing that otherwise qualifies under this goal; (2) the purchase or refinancing of seasoned loan portfolios where the seller has a specific program to use the proceeds of such sales to originate new loans that meet the special affordable housing goal and such purchases or refinancings support additional lending for housing that otherwise qualifies under this goal; and (3) the purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where the loans are not guaranteed by the RTC or the FDIC or other Federal agencies, the loans include recourse provisions similar to those offered through private mortgage insurance or other conventional sellers, and such loans are for the purchase of housing that otherwise qualifies under this goal. (Section 1333(b)(1).)

This Notice clarifies that entities qualify as sellers, under (2) above, where the sellers currently operate or actively participate in an ongoing program that results in the origination of loans meeting the special affordable housing goal; thus, FNMA's purchase of such loans supports additional lending for housing that will qualify under this goal. By encompassing active participation, the Notice allows purchases of portfolios from sellers, that actively participate with qualified housing groups that operate programs resulting in the origination of loans meeting this goal, to count toward achievement of the goal. However, if FNMA wants to count portfolio purchases toward achievement of this

[6] One purpose of the special affordable housing goal is "to increase [FNMA's] purchase of mortgages serving low-income families above and beyond their existing performance and commitment." S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[7] Mortgages that cannot be readily securitized through GNMA or another Federal agency and mortgages where FNMA's participation substantially enhances the affordability of the housing subject to the mortgages include, for purposes of these interim goals, mortgages under the Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z–20, and under the Guaranteed Rural Housing Loan program, 7 U.S.C. 1933.

goal, it must verify and monitor that the sellers currently operate or actively participate in such ongoing programs that result in the origination of additional loans meeting the requirements of this goal. FNMA must also develop necessary mechanisms to ensure compliance with the requirement that sellers actively participate in program(s) which will use the proceeds of the purchase to support additional lending to meet the affordable housing goal.

This Notice provides that the dollar amount of each mortgage that will contribute to achievement of a goal will be the unpaid principal balance of the mortgage, or portion thereof. While section 1336(a)(3)(A) of the Act provides that the Secretary shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which it qualifies, this Notice clarifies that a single mortgage purchase will not be counted as contributing toward the achievement of more than one subgoal under the special affordable housing goal.[8] Additionally, mortgage purchases in excess of the two billion dollar special affordable housing goal, which qualify for any of the subgoals under the special affordable housing goal, may be made without regard to the percentage requirements applicable to the subgoals.

As provided in section 1333(b)(2) of the Act, this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FNMA's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FHLMC's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FNMA may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FHLMC.

Definitions and General Requirements

This Notice details the definitions employed in establishing and measuring compliance with the goals, the Secretary's consideration of the factors under the Act for establishing each of these goals, the goals themselves, and requirements for implementation, monitoring, and reporting purchases under the goals.

Definitions

The Act provides certain definitions which are relevant to these goals including "central city," "enterprise," "low-income," "median income," "moderate-income," "mortgage purchase," "multifamily housing," "single family housing," and "very low-income." (Sections 1303 and 1334(d)(3).) In addition to the definitions provided in the Act, this Notice provides definitions for relevant terms such as "seasoned mortgage" and further clarifies certain terms including "mortgage purchase."

The Act provides that the Secretary shall establish goals for "mortgage purchases." (Sections 1332(a), 1333(a)(1) and 1334(a).) The determination of the types of transactions of FNMA that qualify as "mortgage purchases" directly bears on the appropriate level of the interim goals established. The Act defines the term "mortgage purchases" as including "mortgages purchased for portfolio or securitization." (Section 1303(11).) This Notice provides that the term "mortgage purchases" encompasses transactions where FNMA buys or otherwise acquires mortgages with cash or other thing of value, including swap transactions. While the Secretary commends FNMA's involvement in a wide variety of undertakings including equity investments in projects eligible for Low-Income Housing Tax Credits (LIHTC), 26 U.S.C. 42, and purchases of State and local government housing bonds, which serve significant purposes related to low- and moderate income housing, the Secretary has concluded that these activities generally do not involve "mortgage purchases" by FNMA. Although the Secretary appreciates and encourages FNMA's continued involvement in these programs, such activities shall count toward achievement of these goals only to the extent that they involve mortgage purchases by FNMA which qualify under the Act and this Notice. The Secretary notes that this approach is consistent with the language in the Senate report concerning such activities:

> In the recent past, [FNMA and FHLMC] have invested heavily in low-income housing tax credits. Those investments—which make [FNMA and FHLMC] equity partners in housing developments and preservation efforts sponsored by community-based organizations, national non-profit intermediaries, local corporations, and others—have made important contributions to many communities. The Committee applauds these programs. However, goals required in [the special affordable housing] section relate only to mortgage purchases, and therefore, do not include investments in tax credits or mortgage revenue bonds issued by state or local authorities. [FNMA and FHLMC] are expected to continue such investments, but to carry them out in addition to initiatives necessary to meet the goals contained in this legislation. Following the transition period, such activities could be encompassed on a full or partial credit basis, in the goals [for housing for low- and moderate-income families and for housing located in central cities] * * *.[9]

Where FNMA purchases mortgages on properties sold from FNMA's real estate owned (REO) portfolio acquired through foreclosures, such purchases will count under these goals. Even where FNMA itself provides the financing and takes a mortgage directly from the buyer and no other lender is involved, FNMA acquires a mortgage for its portfolio or securitization and the Secretary has determined to count such a transaction as a "mortgage purchase."

This Notice also clarifies that the term "mortgage purchases" includes all purchases of conventional mortgage loans including, with some limitations, mortgages resulting from refinancings and the purchase of seasoned mortgages. Except as specifically provided under the special affordable housing goal, purchases of refinanced mortgages by FNMA shall receive full credit toward achievement of the goals, but only to the extent such purchases meet the requirements of the Act and this Notice. FNMA shall provide detailed data on refinancings; the Secretary will evaluate the data to determine the extent to which refinancings serve the purposes of these goals and whether refinancings should receive full, partial or no credit toward the achievement of the goals after the transition period.

This Notice also provides that for single family dwellings, a seasoned mortgage will count toward achievement of a goal based on the income of the mortgagor(s) and, for rental units, the tenants' income or the rent level at the time of origination as compared to area median income at the time of origination; appropriate median income data will be used by FNMA.

In defining "mortgage purchases," this Notice excludes non-conventional mortgages, such as mortgages insured under HUD's One- to Four-Family Home Mortgage Insurance Program (section 203(b) and (i) of the National Housing Act, 12 U.S.C. 1709(b) and (i)), and mortgages guaranteed by the Department of Veterans Affairs. "Mortgage purchases" may include FNMA's activities under the Multifamily Mortgage Credit Demonstration (section 542 of the

[8] See S. Rep. No. 102–282, 102d Cong., 2d Sess. 65 (1992).

[9] *Id.* at 38. *See also* H.R. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991).

Housing and Community Development Act of 1992, codified as a note to 12 U.S.C. 1707). Under the program, the Secretary may enter into risk sharing agreements with FNMA and/or FHLMC to finance multifamily housing under which the Secretary and the respective enterprise would assume portions of the risk. To the extent the units financed would qualify toward achievement of any of the housing goals, FNMA may receive partial credit for section 542 activities considering the percentage of the risk that FNMA assumes. The extent of the credit will be determined at a later date based on the specific requirements of the program.

Requirements

As explained above, in counting FNMA's performance in achieving these goals, the Secretary will, for mortgage purchases on single family dwellings, consider the mortgagors' income and/or the rent levels or tenants' income at the time of origination; for mortgage purchases on multifamily properties, the Secretary will consider, based on data at the time of mortgage purchase, the income of prospective or actual tenants if available and, where such income information is not available, the rent on dwelling units in comparison to the rent levels affordable to especially low-, very low-, low-, and moderate-income families. (Sections 1332(c) and 1333(c).) A rent level shall be considered affordable to such families if it does not exceed 30 percent of the maximum income level of the family's classification, *i.e.*, especially low-, very low-, low-, or moderate-income, with adjustments for unit size. (Sections 1332(c)(2) and 1333(c)(2).)

Because sections 1332(c)(1)(B) and 1333(c)(1)(B) of the Act require the use of tenants' income where such data is available, the Secretary is requiring that tenants' income be collected by FNMA where such income information is available. Based on the legislative history, income information is available "when it is known by the lender because, for example, such information is required as a condition of an existing federal housing program."[10]

Where tenant income is not known to the lender, the 30 percent rent proxy is to be used to monitor and evaluate FNMA's performance in achieving the goals as provided in sections 1332(c) and 1333(c) of the Act. (However, the Secretary notes that the 30 percent rent standard prescribed by the Act for determining affordability under the low- and moderate-income housing goal is too inclusive. In applying this standard, it can be anticipated that more than 90 percent of rental housing will be regarded as affordable to low- and moderate-income families.)

The term "rent" is not defined in the Act. Where the term "rent" is used in eligibility and affordability requirements for government housing programs, the term means "gross rent," which includes all utilities, based on either actual data or allowances. Likewise, this Notice defines "rent" as gross rent, *i.e.*, contract rent including utilities or contract rent plus utilities where some or all of the utilities are not included in the contract rent.

Where all utilities are not included in rent, use of contract rent is unsatisfactory and excludes a significant component from housing costs. Utility costs comprise a significantly larger share of total housing costs for lower income families in comparison with higher income families. Moreover, applying the rent test, with rent exclusive of utility costs, would result in an even more unrealistically inclusive test of affordability for rental dwelling units than is the case using gross rent. If contract rent were used, HUD projects that more than 95 percent of all rental units would be classified as affordable to low- and moderate-income families.[11]

To resolve the problem of assuring consideration of gross rents including utility costs, while at the same time providing workable means for including those costs, this Notice allows FNMA to use: Actual data on utilities; utility allowances, provided in this Notice, based on data from the American Housing Survey (AHS); utility allowances established for the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f); and/or an alternative adjustment formula subject to approval by the Secretary. The Notice provides that unless such an alternative approach is approved by the Secretary, FNMA shall use actual data, the AHS-derived allowances, or the Section 8 allowances.

Where tenant income is not available, sections 1332(c)(2) and 1333(c)(2) of the Act require that the test for affordability of rental dwelling units be applied to units "with appropriate adjustments for unit size as measured by the number of bedrooms." Thus, to determine whether a unit counts toward achievement of a goal, rent on the unit is considered in terms of the number of persons housed in the unit. The Low-Income Housing Tax Credit (LIHTC) provides an accepted formula for adjustments to determine housing capacity, see 26 U.S.C. 42(g)(2)(C), and this Notice requires the use of those adjustments for these goals. These adjustments assume that an efficiency houses one person, a one bedroom unit houses 1.5 persons and each additional bedroom houses an additional 1.5 persons.

Income adjustments for family size, required under the Act to determine whether a renter family's income qualifies as especially low, very low, low, or moderate, are established for the HUD Section 8 program and use of these adjustments is also required under this Notice. To determine which rental dwelling units qualify as affordable, this Notice combines the LIHTC unit size adjustment factors with the Section 8 family size adjustment factors to develop the necessary unit size adjustment factors to be applied to rent. For example, under the LIHTC an efficiency is assumed to house one person; under Section 8, for moderate income, one person's rent may not exceed 70 percent of 30 percent of area median income; thus, an efficiency is affordable for a moderate-income person if the rent does not exceed 21 percent of area median income.[12] Similarly, a two-bedroom unit is assumed to house three persons; three persons' rent may not exceed 90 percent of 30 percent of area median income; thus, a two-bedroom unit is affordable for a moderate-income family if the rent does not exceed 27 percent of area median income. These percentages are included below under "General Requirements."

In some instances, the LIHTC unit size adjustments and the Section 8 family size adjustments do not directly correspond to each other. For example, under the LIHTC a one-bedroom apartment is assumed to house 1.5 persons but Section 8 does not provide a family size adjustment for 1.5 persons. Therefore, the HUD Section 8 adjustment factors for one person (70 percent) and two persons (80 percent) have been averaged to obtain a rent not in excess of 75 percent of 30 percent of area median income, yielding a net unit size adjustment factor of 22.5 percent of area median income.[13] Similar

[10] S. Rep. No. 102–282, 102d Cong., 2d Sess. 35 (1992).

[11] Using rent as defined in this Notice, consistent with current law, 93 percent of existing rental dwelling units and 78 percent of recently constructed rental dwelling units qualify as affordable to low- and moderate-income families.

[12] Similarly, for purposes of determining affordability to low-income families: an efficiency is assumed to house one person; one person's rent may not exceed 70 percent of 30 percent of 80 percent of area median income (using family size to adjust income); thus, an efficiency is affordable to a low-income family if the rent does not exceed 16.8 percent of the area median income.

[13] Similarly, for purposes of low-income affordability, the same 75 percent figure is used to

interpolations also are made for three-bedroom and five-bedroom units.

In establishing the goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary, under section 1331(b), may consider the number of housing units financed by any multifamily housing mortgage purchase. The Secretary has decided to count all such dwelling units, whether in multifamily or single family housing, under these goals if the units otherwise meet the requirements of the Act and this Notice.

The statute does not allow a unit or mortgage that satisfies another State or Federal low- or moderate-income housing requirement to be automatically counted under this Act without independently meeting the Act's requirements.

In accordance with section 1335 of the Act, this Notice requires that in order to meet these goals, FNMA shall: Design programs and products that facilitate the use of government assistance; develop relationships with organizations that develop and finance housing and with State and local governments including housing finance agencies; take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, assist insured depository institutions to meet Community Reinvestment Act obligations, including developing appropriate and prudent underwriting standards; and develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

Section 1336(a) of the Act requires the Secretary to monitor and enforce the goals. As required by section 1336(a)(3)(A), this Notice provides that a mortgage purchase (or a dwelling unit financed by such purchase) by FNMA will count toward achievement of each such goal for which it qualifies only as established in the Act and this Notice.

Reporting

A key purpose of the transition period is to gain data on the enterprises' performance.[14] Under this Notice, the Secretary requires quarterly and annual reports from FNMA and such other reports as the Secretary considers appropriate to carry out the Secretary's responsibilities. The Act, at section 1337, and this Notice require FNMA to submit to the Secretary, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives within 45 days of the establishment of the goals a report for each interim housing goal describing the actions FNMA plans to take to meet the goal. This Notice requires this initial report as well as annual, quarterly, and periodic reports as required by the Secretary. The requirements for these reports contained in this Notice may be satisfied either through separate reports on the goals covering housing for low- and moderate-income families, housing located in central cities, and special affordable housing, or through consolidated reports on all three goals.

Response to Comments From FNMA and FHLMC

On July 22, 1993, the Secretary provided each enterprise an opportunity to review and comment on that enterprise's proposed Notice of Interim Housing Goals. Both enterprises provided comments.[15] HUD staff also met with FNMA and FHLMC officers and employees to discuss the comments; after the meetings, additional comments were provided.[16] (Copies of these comments are available for public inspection in room 8234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.) The following is a discussion of these comments.

Differences Between Enterprises in 1993 Low- and Moderate-Income and Central City Goals

FNMA commented that the Notice for FHLMC should not establish lower interim low- and moderate-income and central city housing goals for FHLMC than for FNMA in 1993 and requested that HUD eliminate the disparity as soon as possible. In establishing the goals for each enterprise, the Secretary considered the factors required by the statute, including FNMA's and FHLMC's performance and effort in previous years. *See* sections 1332(b)(3) and 1334(b)(3). Considering FHLMC's performance in previous years, including its absence from multifamily financing, the Secretary determined that FHLMC's goals for 1993 and 1994 should be set at the figures originally established. However, it should be noted that the low- and moderate-income and central city goals for FHLMC are the same as those for FNMA for 1994. Accordingly, the Notices have not been changed in this regard.

Special Affordable Housing

FHLMC objected to the Notice's requirement that its purchases of mortgages counting toward achievement of the special affordable housing goal in 1993 and 1994 be "above and beyond" its 1992 performance ("1992 base" or "base"). FHLMC contended that such a requirement is inconsistent with Congressional intent. The Senate report states that one purpose of the goal is "to increase [FHLMC's] purchase of mortgages serving low-income families above and beyond [its] existing performance and commitments."[17] This language is consistent with section 1333(d)(2) which establishes a special affordable housing goal for FHLMC of "not less than" $1.5 billion.

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obtain a rent not in excess of 75 percent of 30 percent of 80 percent of area median income, yielding a net unit size adjustment factor of 18 percent.

[14] The legislative history provides: One reason for adopting the low-income housing provisions set forth in the Committee bill is the Committee's frustration with the lack of concrete information on [FNMA's] and [FHLMC's] current activity in the area of housing for low-income persons. ... Further, because [FNMA] and [FHLMC] do not collect data on the income of borrowers or tenants, it is impossible to tell what income levels are being served by the enterprises' current activities. H. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991). "[A]n information vacuum has severely impeded Congressional efforts to measure [FNMA's] compliance with regulatory housing goals that have been in force since 1978. The Committee believes that enactment of this bill will fill this vacuum on an expeditious basis ...." S. Rep. No. 102–282, 102d Cong., 2d Sess. 39 (1992); see *id.* at 33 ("there was no complete and accurate data to measure the [enterprises'] performance in serving low- and moderate-income families. ... The Committee's initial investigation yielded a disturbing lack of empirical information on the [enterprises'] business"). The Senate report noted that collection of data is "central to understanding and evaluating the [enterprises'] single-family and multifamily businesses." *Id.* at 39. The Senate report further noted that data collection "will help evaluate the extent to which [FNMA] and [FHLMC] are meeting the needs" of those persons intended to benefit from the housing goals. *Id.* The collected data "will show, for the first time, the nature and scope of the enterprises' multifamily business," *id.* at 40, and "will ensure, for the first time, that the regulator and Congress have all the information necessary to assess the performance of the [enterprises]," *id.* at 34. After the transition period, the Secretary will have "latitude to adjust the goals to take into account newly available data." *Id.* at 36. Specifically concerning the special affordable housing goal, the Senate report states: "After the experience of the first two years, the [regulator] may redesign the categories to target more effectively low-income family needs and reflect any gaps in [enterprise] performance." *Id.* at 37.

[15] FNMA commented in a letter, dated August 9, 1993, from James A. Johnson, Chairman of the Board and Chief Executive Officer, to the Secretary (hereinafter referred to as "FNMA Comment"). FHLMC commented in a letter, dated August 11, 1993, from Leland C. Brendsel, Chairman and Chief Executive Officer, to the Secretary (hereinafter referred to as "FHLMC Comment").

[16] FNMA's letter was from Joseph E. Amato, Director of Regulatory Policy, and FHLMC's letter was from Frank E. Nothaft, Director, Economic Operations/Analysis. Both letters were addressed to Ben E. Laden, Director, Financial Institutions Regulation Staff at HUD and were dated August 18, 1993.

[17] S. Rep. 102–282, 102d Cong., 2d Sess. 36 (1992).

According to estimates derived from Home Mortgage Disclosure Act (HMDA) data, in 1991 alone FHLMC purchased more than $800 million and FNMA purchased more than $1 billion of single family mortgages that would have met the requirements of this goal. Due to the significant increase in the enterprises' business in 1992, their 1992 special affordable purchases presumably exceeded the levels attained in 1991.[18] The legislative history of the Act provides that the goal should "increase the [enterprises'] purchase of mortgages."[19] Given the estimates of the level of the enterprises' 1991 purchases, it is clear that requiring performance "above and beyond," consistent with the legislative intent, is required to increase the enterprises' purchases. Otherwise, the overall goals for 1993 and 1994, averaging $750 million for FHLMC and $1 billion for FNMA each year, including both single family and multifamily purchases, would require less than the dollar amount of single family special affordable purchases that FHLMC and FNMA made in 1991 alone.

Under the special affordable housing goal, 1992 performance provides the base beyond which the enterprises must perform. FNMA noted that its performance relevant to special affordable housing in previous years has increased its 1992 base for the special affordable housing goal and stated that FHLMC's base will be significantly lower than FNMA's. Accordingly, FNMA requested that this "competitive inequality" be eliminated as soon as possible.[20] Although FNMA's purchases of special affordable mortgages have exceeded FHLMC's, the Notice retains the "above and beyond" requirement for the transition period, because it is consistent with the Act and its legislative history. After that, this matter will be considered in implementing the Secretary's authority to establish special affordable housing goals beyond the transition period under section 1333(a)(1).

FNMA and FHLMC stated that the 1992 base may be a distorted benchmark for the special affordable housing goal due to the record volume of business in 1992. FNMA commented that HUD should recognize the effects of large shifts in volume and recommended adjusting the 1992 base to reflect the change in the average level of FNMA's business in 1993 and 1994. Although fluctuations in business volume are likely, 1993–94 should also be a strong period for mortgage finance due to: An extended decline in interest rates following a long period of high interest rates; the high level of FNMA and FHLMC business to date in 1993;[21] and the fact that the country is in the early stages of an economic recovery, which generally corresponds to a period of increased home purchases. Also, adjusting the 1992 base for the percentage change in overall 1993–94 volumes would mean that the actual dollar amounts of the special affordable housing goals for 1993–94 could not be established until 1995. Accordingly, the Notice makes no change in the requirement that 1992 serve as the base for the special affordable housing goal.

FNMA requested that the time provided under the Notice for submission of an estimate of its special affordable 1992 base be extended from 60 to 90 days. Because the Secretary believes that 60 days is a reasonable time to prepare its report, the time period has not been extended. FHLMC requested that it not be required to certify its base; the Notice now requires "a good faith estimate," not a certification.

FNMA and FHLMC objected to the Notice's requirement that, to achieve the low-income portion of the multifamily special affordable housing goal, each dwelling unit must be affordable to low-income families. FNMA argued that a proportional approach—counting units meeting the goal as provided in sections 1333(d)(3)(A)(ii)(I) and (II), as applicable to the very low-, especially low-income portion of the multifamily goal—should also apply to the low-income portion of the goal. Section 1333(d)(3)(C) specifies proportionality for the very low-, especially low-income portion of the goal but omits this requirement for the low-income portion. Although this can be interpreted as not permitting proportionality for the low-income portion, it may also be read as not precluding a proportional approach. After further review of the legislative history, the Notices have been changed to permit proportional counting for both the low-income and the very low-, especially low-income portions of the multifamily goal.

FHLMC requested that the Notice base the portion of a multifamily mortgage to be counted toward the special affordable housing goal on the number of units, not the rent levels for those units. Because the Secretary has determined that the proportion of rent levels in a project provides a more accurate measure of the portion of a mortgage attributable to affordable units and that the collection of the relevant rental data does not impose a significant burden on the enterprises, this provision has not been changed.

FNMA and FHLMC objected to the requirement that, for purposes of determining whether a seller of seasoned portfolios of loans is engaging in a specific program to use proceeds of sales to originate additional special affordable loans under section 1333(b)(1)(B), the enterprise must enter into "binding agreements" with sellers under which the sellers agree to originate additional loans meeting the requirements of the goal. FNMA and FHLMC commented that lenders might be dissuaded from participating in these programs because of rigid requirements. FHLMC suggested that the usual system of representations and warranties would suffice. FNMA suggested that purchases from "lenders who are wholly 'in the business' of making such loans, such as community loan funds or community investment corporations," automatically qualify without any further assurances.[22] FNMA suggested that for other lenders, the Notice should permit FNMA to implement the Act's requirements as it deems appropriate. The Notice has been modified to make clear that in order to carry out this statutory requirement, the enterprises are responsible for assuring that the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, as required by the Act for the purchases of portfolios of seasoned loans that count toward the goal.

FHLMC suggested that since rehabilitation loans under section 203(k) of the National Housing Act, 12 U.S.C. 1709(k), may not be readily securitized through the Government National Mortgage Association (GNMA), purchases of these loans should qualify under the special affordable housing goal. Section 203(k) rehabilitation loans are readily securitized by GNMA. Accordingly, such loans will not qualify under the special affordable housing goal.

Section 1333(b)(2) states that no credit is to be given under the special affordable housing goals for refinancings of existing enterprise portfolios. FHLMC commented that this should not be interpreted as applying to the

[18] HMDA data for 1992 is not yet available. HMDA data provides no information on purchases by FNMA and FHLMC that would qualify under the multifamily portion of the special affordable housing goal.

[19] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[20] FNMA Comment at 6.

[21] FNMA expects its 1993 business volumes will "equal, if not exceed," the record volumes of 1992. *Id.* at 15. Also, FHLMC referred to "current favorable economic conditions." FHLMC Comment at 5.

[22] FNMA Comment at 8.

enterprises' purchases or securitization of individual mortgages. According to the comments, neither FNMA nor FHLMC would know if such properties had been previously financed by the other enterprise. As provided in the Act, at section 1333(b)(2), this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FNMA's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FHLMC's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FNMA may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FHLMC.

Data and Related Issues

FNMA criticized the use of data from the 1981 Survey of Residential Finance (SRF) analyzing the 1977–80 period because the material allegedly is outdated and overstates multifamily activity. The SRF is conducted decennially; data from the 1991 SRF are not yet available.[23] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of conventional mortgage originations, according to the Department's Survey of Mortgage Lending Activity.

FNMA stated that the Notice's use of HMDA data overstates the size of the central city market because it is based on the "100 Percent Method." The Notice's estimate of the size of the potential central city market is based on data from the SRF and the AHS, not on HMDA data. Also, in the instances where the Notice did utilize HMDA data, in measuring performance, both the proportional method and the "100 Percent Method" were used.

FNMA stated that the "significant financing role performed by FHA/VA in central city and low- and moderate-income housing shrinks [the] universe of eligible loans."[24] The Department's analyses of the market have been conducted only with data on conventional loan originations.

Reporting requirements

FNMA urged reconsideration of the "rigid, detailed data and reporting requirements for [FNMA] and its lenders."[25] The legislative history makes clear that a key purpose of the transition period is data gathering.[26] Accordingly, while the Notice still conforms to the Congressional intent, changes have been made to reduce the reporting requirements.

FNMA requested that the due date for its annual report be extended from 60 to 90 days after the end of the year. Under section 1328(a) of the Act, the Secretary must report to Congress by June 30 of each year. To assure adequate time to consider data, the due dates for reports have not been revised.

FNMA commented that quarterly reports could be confusing and misleading and may have to be restated, because information needed to determine whether a mortgage purchase counts toward achievement of a goal may not be available until after the end of the first quarter. For example, FNMA stated that the Department's median income estimates are generally not available until April or May. The Notice clarifies that any such information that is released during a quarter need not apply until the start of the next quarter; thus, if median income estimates are released in May, those income levels could, at FNMA's option, apply only to mortgage purchases made on or after July 1.

FNMA commented that detailed quarterly reports should not be required and, instead, one semiannual report should be required each year. FNMA stated that this could be supplemented by an "abridged version" of a quarterly report and FNMA provided a sample format of such a report. Because the Department needs to evaluate the enterprises' performance on an ongoing basis and particularly during the transition, the Notice maintains the requirement for full quarterly reports.

FHLMC requested that the Department clarify when the first quarterly report will be due, and requested that such report be due after the first full quarter of performance under the Notice. Since the 1993 report will cover the last quarter of 1993, the Notice clarifies that the first quarterly report shall be for the first quarter of 1994.[27]

FNMA objected to the requirement that in reporting mortgages as qualifying under the income-based goals that it "make certain" that incomes of prospective tenants are reasonable. The Notice now requires FNMA to "determine" that such incomes are reasonable.

In determining whether seasoned mortgages count toward any of the goals, FNMA and FHLMC suggested that for mortgages on owner-occupied and single family rental properties the owner- or tenant-occupancy status of dwelling units be evaluated as of the time of mortgage origination, rather than the time of mortgage acquisition, because FNMA and FHLMC lack information on tenancy at the time a seasoned mortgage is acquired; these changes have been made.

Because of the nature of information available, FNMA also requested that the Notice clarify that rents for multifamily rental units be measured at the time of mortgage acquisition; the Notice clarifies this position. FHLMC requested that for purchases of seasoned loans, these requirements only apply to loans originated after January 1, 1993, because much of the required information was not available prior to this date. Pursuant to the Act, income information is essential to determine whether particular dwelling units count toward achievement of the low- and moderate-income housing and special affordable housing goals. Accordingly, the requirements apply to all loans whether or not originated before 1993. Where such information is not available to the enterprises, the Notice provides that mortgages on such properties will not be included in the calculation of any of the housing goals.

For single family rental properties, FNMA and FHLMC stated that income, race, and gender information on tenants required under the Notice is not available to the enterprises. FNMA requested that it not be required to collect and report that data. Section 1324(b)(3) requires the Secretary to "analyze data on income, race, and gender and compare such data with larger demographic, housing, and economic trends" and report that analysis to Congress.[28] This information was intended to assist the Secretary in reporting to Congress. Pending further consideration, the Notice has been changed to require this information only where it is available. However, in the

[23] An alternate estimate of the share of dwelling units found in 1–4 family rental housing can be obtained from the 1991 American Housing Survey (AHS); however, the AHS estimate is not restricted to properties with conventional mortgages and, therefore, is not an appropriate data source.

[24] FNMA Comment at 2 n. 1.

[25] Id. at 4.

[26] *See, e.g.*, S. Rep. 102–282, 102d Cong., 2d Sess. 39 (1992).

[27] The first report due under this Notice will be the annual report for 1993, due 60 days after the end of this year.

[28] Sections 1381(p) and 1382(s) require the enterprises to report to Congress and the Secretary "the income class of tenants of rental housing (to the extent such information is available)."

future, data of this nature may be required.

Utility Costs

The Notice previously provided that in applying the rent test of affordability, contract rent could be used where the enterprise knew that all utilities were included.[29] Otherwise, the cost of utilities that were not included had to be added to contract rent. Such utility costs could be the actual costs paid by the renter, the section 8 utility allowance, or utility costs as calculated under a method approved by the Secretary.

FHLMC commented that the collection of utility data is unnecessarily burdensome and requested that the Notice clarify that FHLMC may use actual utility data, Section 8 data, or an alternative approved by the Secretary; in fact, the proposed Notice stated this, and this Notice reiterates this point. FNMA stated that, although it recognized the need to consider utilities, the utility requirement was unworkable because FNMA has very little information on utilities included in contract rents or on utilities paid by tenants. Thus, FNMA stated that it "would not be able to comply at present with the Notice's requirements for calculating utility costs for all our multifamily properties around the country,"[30] and noted that 140,000 such dwelling units were located in the properties securing the multifamily mortgages it purchased in 1992.

The Department's projections indicate that collection of actual data may be less burdensome than suggested, because these multifamily units were located in approximately 2000 multifamily properties, and obtaining utility information on 2000 properties would not impose an undue data burden on FNMA.

Nonetheless, to ensure that utilities are included in rent, the Department has developed utility allowances, based on information from the 1991 American Housing Survey (AHS). In establishing these allowances, the Department analyzed AHS data on the median costs,[31] based on unit type, paid by renters in both multifamily and single family properties for electricity, gas, oil, and water, for each of the Department of Energy's five Climate Zones.[32] These allowances provide an alternative to the methodologies previously contained in the Notice and should be easily implemented by the enterprises. If these utility allowances are used, the appropriate allowance must be added to the contract rent for the rental unit unless all utilities are included in the contract rent for a unit.[33]

Definitions

FNMA requested that the Secretary allow credit enhancement activities to count as "mortgage purchases" under the low- and moderate-income and central cities goals. The comment described a multifamily credit enhancement transaction carried out with a number of state and local housing agencies in which FNMA puts up mortgages as collateral to reduce the costs of bond financings. FNMA argued that this activity is equivalent to the issuance of a mortgage-backed security under which FNMA assumes the credit risk in the financing of mortgages. Because the described transaction is substantially similar to a mortgage purchase, the Notice has been revised to allow qualifying mortgages funded under this particular type of transaction to be counted as mortgage purchases. This Notice only approves this particular credit enhancement transaction to be treated as a mortgage purchase. Other kinds of credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless such transactions are reviewed and specifically approved by the Secretary for this purpose.

FNMA commented that equity investments in low-income housing tax credits (LIHTCs) and purchases of state and local government mortgage revenue bonds (MRBs) should in the future be included as "mortgage purchases." Decisions regarding future goals have not been made.

FHLMC commented that commitments to buy mortgages should be included in the definition of "mortgage purchases." Because a commitment is not equivalent to a "mortgage purchase," the definition has not been changed. However, the Notices now provide that the enterprises may submit information on commitments in their reports to the Secretary concerning the special affordable housing goal.

FHLMC requested that its activities under section 542 of the Act[34] be included in the definition of "conventional mortgage" even though such activities would involve guarantees by the Federal government. Under section 542(a), the Secretary is required to demonstrate the effectiveness of providing new forms of credit enhancement for multifamily loans and to evaluate the effectiveness of entering into arrangements with FNMA and FHLMC involving reinsurance and risk-sharing. The Secretary may then enter into such agreements pursuant to section 542(b), under which the Secretary would assume portions of the risk (section 544(3)).[35] To the extent FNMA or FHLMC assumes credit risk under such agreements and to the extent the enterprises' activities otherwise qualify under the Act and this Notice, the enterprises shall receive partial credit under the goals considering the extent of the enterprises' risk as established under this section 542 program.

FNMA suggested that a "seasoned mortgage" be defined as any mortgage originated five years or more before its purchase by FNMA. FNMA said that lenders may hold adjustable-rate mortgages (ARMs) up to five years after origination. The Department's definition is the customary definition used in mortgage financing and is also used in the definition of "seasoned mortgage" contained in the Glossary to FNMA's Selling Guide, August 15, 1991. The definition of "seasoned mortgage" has not been modified.

FNMA and FHLMC commented that the definition of "mortgage" should include loans on cooperatives; this addition has been made.

FNMA commented that, although "rural" and "underserved" were not defined, the Notice required FNMA to report information on mortgages in rural areas and in underserved areas. The reporting requirements for "underserved" areas has been deleted and a definition for "rural area" has been added to the Notices.

FNMA commented that lenders report to FNMA a category of "other minority," in addition to the minority categories included in the definition of minority.

[29] The Department notes that 1991 AHS data indicate that electricity is paid separately from contract rent by tenants in 87 percent of all rental units, and that some utilities are paid separately from contract rent in 89 percent of all rental units.

[30] FNMA Comment at 5.

[31] The AHS medians have been adjusted for the percentage change in the Consumer Price Index for Fuel and Other Utilities between July–December 1991 (the period when the AHS was conducted) and the most recent three month period (May–July 1993).

[32] Because higher costs for oil and gas in colder regions are largely offset by higher costs for electricity in warmer regions, regional variations in utility costs need not be taken into account during the transition period.

[33] In cases where no utilities are included in contract rent, these allowances may yield underestimates of gross rent, and in cases where most utilities are included in contract rent, these allowances may yield overestimates of gross rent. Because the allowances incorporate information of the frequency of inclusion or exclusion of various utility costs in contract rent, these effects will largely offset each other.

[34] Codified as a note to 12 U.S.C. 1707.

[35] *Id.*

In the Notice, the definition is used in defining "minority census tract" and "concentrated minority census tract" and it is not used in reporting which mortgages are purchased by FNMA from minority borrowers. Accordingly, the definition has not been revised.

FHLMC suggested that, for counties in non-metropolitan parts of a state, the definition of "median income" should permit the use of the greater of the county's median income or the median income for the entire non-metropolitan part of the state. FHLMC stated that this change would aid some families who live in particularly poor counties that may not be low-income based on the county's median income but may be low-income based on the state's non-metropolitan median-income. FHLMC argued that this approach has been applied in defining eligibility for certain housing subsidy programs, including HOME and LIHTCs. The Department notes that under these programs, eligibility is based on a fraction of median family income rather than median income. These programs therefore do not provide pertinent precedents here. The Notice does not change the definition of "median income." Based on data provided during the transition, the Department will study this issue in connection with future goals for rural and underserved areas.

Rent

FHLMC requested that the Notice allow increases in the affordability standard for rents for high-rent areas. In this case, also, the precedent from housing subsidy programs does not apply and such an adjustment is not appropriate. Under other programs, eligibility is based on a fraction of median family income rather than median income. Further, under the test in the Act, 90 percent of all rental housing is affordable to low- and moderate-income families. Accordingly, there is no need to permit adjustment of the test.

FHLMC stated that when it underwrites a multifamily mortgage, the rent used is the average contract rent by unit type. Accordingly, requiring the use of actual contract rent for each individual unit in determining whether units count under the low- and moderate-income housing and special affordable housing goals would be burdensome. The Notice has been revised to require each enterprise to use actual rents on individual units in multifamily properties where actual rents are available; where actual rents are not available, average contract rent by unit type may be used.

Similarly, FHLMC commented that it should be permitted to use either rents or incomes to measure affordability for all units in a single multifamily project and that it should not be required to use both. The Notice has been changed to permit use of either.

Miscellaneous Comments

FNMA and FHLMC objected to the provisions in the Notices that the goals or specifications could be revised using the same procedure as the original issuance of the Notices rather than by regulation. Because there is a special process for establishment of the transitional goals and rulemaking is not required, to maintain flexibility during the transition period this section of the Notice has not been changed.

In connection with determining a property's location for purposes of determining whether the property is located in a central city, FHLMC commented that the Notice's reference to "a smaller geographic segment" should be replaced with "some other geographic segment." The Notice has been changed to reflect FHLMC's suggestion.

Accordingly, the Notice of Interim Housing Goals is set forth as follows:

Interim Housing Goals for the Federal National Mortgage Association

I. The Low- and Moderate-Income Housing Goals
II. The Central Cities Housing Goals
III. The Special Affordable Housing Goal
IV. General Requirements
V. Definitions
VI. Revision of the Notice
VII. Monitoring and Enforcing Compliance
VIII. Housing Finance Reports

I. The Low- and Moderate-Income Housing Goals

A. Establishment

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561–4567), the goals for the purchase of mortgages on housing for low- and moderate-income families are intended to achieve increased purchases by the Federal National Mortgage Association (FNMA) of such mortgages.

In establishing the low- and moderate-income housing goals, section 1332(b)(1)–(6) of the Act requires the Secretary to consider:

1. National housing needs;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;
4. The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
6. The need to maintain the sound financial condition of the enterprises.

B. Underlying Data

In considering the factors under the Act to establish these goals, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) (HMDA), and data gathered from FNMA, to determine national housing needs; economic, housing, and demographic conditions; the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market; and the ability of FNMA to lead the industry. The Secretary used data provided by FNMA and data gathered under HMDA to determine FNMA's prior performance in meeting the needs of low- and moderate-income families and FNMA's financial condition.

C. Consideration of the Factors

1. National Housing Needs

Housing affordability is a problem for many American families nationwide.[36] Between 1979 and 1989, households paying more than 30 percent of their income for housing rose from 42 percent to 43 percent among renters, and from 17 percent to 19 percent among owners.[37]

Affordability problems are greatest among low- and moderate-income renters and are most frequent and severe among the lowest income renters. In 1989, when the average gross rent/income ratio for renters with incomes in excess of area median income was 21 percent, this ratio was 62 percent for renters with incomes below 30 percent of median and 38 percent for renters with incomes between 31 and 50 percent of median.[38]

The percentage of American families owning their own home increased in

[36] Since the early 1980s, "affordable housing" has meant housing for which the homeowner or renter pays no more than 30 percent of family income for housing costs, including utilities.

[37] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[38] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991) performed by HUD Office of Policy Development and Research.

virtually every year of the 1960s and the 1970s, reaching a peak of 65.8 percent in 1980. The homeownership rate then fell below 65 percent during the first half of the 1980s. In the last few years, declining home prices and lower mortgage rates have reduced the cost of owning a home. However, due to unemployment and weak income growth, this cost reduction has not led to an increase in the homeownership rate, which stood at 64.3 percent in the first half of 1993—below the rates for 1972–84.[39] The average income of the greatest source of potential first-time home buyers, married couples, aged 25–29, who rent, was $24,946 in 1991, down from $26,600 in 1989 (both in 1989 constant dollars). Among the 25–29 age group, the homeownership rate declined to 32.8 percent in 1991, down from 43.3 percent in 1980. Sharp declines in homeownership have also occurred for families in which the head of household is 30–39 years of age.[40]

Examined by income, the drop in home ownership during the 1980s was greatest among low- and moderate-income families—ownership rates remained constant or increased among households with incomes above area median. Among low- and moderate-income families, declines in ownership were greatest among families with children. Indeed, among moderate income families, ownership rates actually rose between 1978 and 1989 for all household types other than families with children; the ownership rate for families with children dropped from 78 to 70 percent.[41]

During the 1980s, the rate of new household formations declined and, in the 1990s, the rate is expected to decline further to an estimated 1,205,000 households annually.[42] The number of people turning twenty years of age will start to grow again in the mid-1990s.

The Act requires FNMA to play a major role in assisting low- and moderate-income households in obtaining housing. During the next few years, homes will be more affordable for many people due to lower inflation and lower interest rates. Slow growth of households, discussed above, should mean moderate demand in the housing market, allowing continuation of favorable market conditions for new home buyers. Under these conditions, the opportunity exists for significant growth of the homeownership rate in the population, including that for low- and moderate-income families, and this growth can be affected substantially by the activities of FNMA.

2. Economic, Housing, and Demographic Conditions

A number of developments in economic, housing, and demographic conditions are of concern to the Secretary, including:

a. *The number of homeless individuals.* The precise number of homeless individuals is difficult to determine, but a study by the Urban Institute estimated that there were between 496,000 and 600,000 homeless persons in the United States during a seven-day period in March 1987, and more than one million persons were homeless at some time during that year.[43] The Congressional Budget Office estimated a one-day homeless population of approximately 700,000 for 1991.[44] The Census Bureau supplemented its regular 1990 census operations with a special one-night "Street and Shelter Night" count of the homeless, and found more than 228,000 homeless individuals at emergency homeless shelters and at pre-identified street locations on the night of March 20, 1990.[45]

b. *The number of low-income renter households spending 50 percent or more of their income on housing,* which rose from 4.3 million in 1978 to 5.4 million in 1989.[46]

c. *The increase in the percentage of poor homeowners paying a high proportion of their income for housing costs.* Specifically, 30.6 percent of poor homeowners spent 60 percent or more of their income on housing in 1978; this figure rose to 33.1 percent in 1989.[47]

d. *The decline in the number of low rent units in the housing stock.* The affordable rental housing stock (the number of rental units with rents less than $300 per month, in constant 1989 dollars) fell from 9.9 million units in 1974, to 9.5 million units in 1985, and 9.0 million units in 1989.[48] The decline has been greatest for affordable unsubsidized units, which fell from 7.8 million in 1974 to 5.0 million in 1989.[49]

e. *The drop in multifamily housing starts.* In 1991, only 138,000 units in new private multifamily structures (5 or more units) were started; in 1992, this figure rose minimally to 139,000 units, but for the first half of 1993, multifamily starts have fallen below the 1991 level.[50] Multifamily starts in 1991 and 1992 were far below the annual average of 457,000 units for 1964–90.[51] The total number of private housing units started in 1991 was at the lowest level since World War II. Although starts rose by 18.5 percent in 1992, to 1.2 million units, they were still below the levels attained in 26 of the 30 years from 1960 through 1989.

The current housing market is characterized by an increase in the refinancing of existing mortgages. The volume of refinancings depends primarily on changes in interest rates. When interest rates fall significantly, homeowners can reduce their borrowing costs by refinancing their mortgages, and refinancings often become a high percentage of FNMA's total business. Conversely, when interest rates rise significantly, refinancings usually become a small share of mortgage activity.

In 1982, the average 30-year fixed rate mortgage interest rate reached a record high of 15.1 percent. This rate declined steadily through 1988 to 9.2 percent, but it still exceeded the rates that prevailed in the 1960s and 1970s. In 1989 and 1990, mortgage rates again exceeded 10 percent, before dropping to an average of 8.2 percent in 1992. The July 1993 rate was 7.20 percent—the lowest level since 1968.[52]

As a result of the increase in mortgage interest rates from 1988 to 1989, refinancings decreased from 24 percent of all mortgage originations in the first half of 1988 to 20 percent in the first half of 1989. As a result of the sharp decline in mortgage interest rates in

[39] U.S. Department of Commerce News, Bureau of the Census, Census Bureau Reports on Residential Vacancies and Homeownership (July 23, 1993).

[40] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 12, 28 (1992).

[41] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed?", 3 Housing Policy Debate 1, 21 (1992).

[42] Armijo, Berson, Obrinsky, and Valgeirsson, "Demographic and Economic Trends," 1 J. Housing Research 21, 26 (1990).

[43] Interagency Council on the Homeless, Executive Summary: The 1990 Annual Report of the Interagency Council on the Homeless 20 (1991).

[44] *Id.* at 21. This figure was based on a memorandum written by the Congressional Budget Office which used the 1987 Urban Institute study as its starting point and was updated using a 5 percent annual growth rate.

[45] Interagency Council on the Homeless, Fact Sheet, "How Many Homeless People Are There?," April 1991, No. 1–1.

[46] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed," 3 Housing Policy Debate 1, 16 (1992).

[47] Center on Budget and Policy Priorities and Low Income Housing Service, *A Place to Call Home* 5 (April 1989) and U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 at 112 (July 1991).

[48] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992). The 1989 figure reflects Census adjustment of fuel and utilities measurement.

[49] *Id.* at 35–36.

[50] Council of Economic Advisers, Economic Indicators 19 (August 1993).

[51] Data on multifamily housing starts is not available for years prior to 1964.

[52] Council of Economic Advisers, Economic Indicators 30 (August 1993) and Economic Report of the President 428 (January 1993).

1991 and 1992, refinancings accounted for 52 percent of all mortgages closed in 1992.[53]

HMDA data indicates that in 1990 the income levels of families refinancing closely approximated the income levels of families obtaining home purchase mortgages. In that year, 25.0 percent of home purchase conventional mortgage originations were made to borrowers with incomes below area median; the corresponding figure for refinancings was also 25.0 percent. If only conventional mortgages below the conforming loan limit were counted, these 1990 percentages would both rise to approximately 28 percent.[54] Analysis of the 1991 HMDA data by the Federal Reserve Board indicates that about 32 percent of conforming conventional home purchase mortgages were made to borrowers with incomes below area median; the corresponding figure for refinancings was about 28 percent. Despite the difference in data for the low- and moderate-income shares of home purchase mortgages and refinancings, the data also suggest that even if half of FNMA's mortgage purchases were refinancings, FNMA could still reach the 30 percent low- and moderate-income target. A high volume of refinancings would not prevent FNMA from meeting the goals in this Notice.

The demographic composition of persons seeking housing has changed significantly in recent years, reflecting changes in family structure. Single-person and single-parent households have increased as a portion of the population more than other household types. The number of single-parent households increased by 15 percent between 1985 and 1989; the number of married-couple households with children did not change significantly during the same period. Only 35 percent of single-parent households were homeowners compared to 74 percent of married couples. Although single-parent households had lower monthly housing costs than married couples with children, single-parent households, on average, pay a larger proportion of their family income for housing costs than married couples with children (24 percent compared to 19 percent, respectively, for owners; 34 percent compared to 23 percent, respectively, for renters).[55]

The Bureau of the Census has reported growing inequality in the distribution of income from 1981 to 1991. Those in the lowest 20 percent income group saw their share of aggregate household income decrease from 4.1 percent in 1981 to 3.8 percent in 1991, while those in the highest 20 percent income group saw their share of aggregate household income increase from 44.4 percent to 46.5 percent between 1981 and 1991.[56] This greater disparity in incomes has led to increases in both the number of affluent homeowners and the number of persons who find it difficult to purchase adequate shelter.

The rental vacancy rate fell as low as 5.0 percent in the late 1970s and the early 1980s, but it has exceeded 7 percent from 1986 through the first half of 1993. Despite the large number of vacant units and weak economic growth, monthly rental costs (in 1989 constant dollars) declined by only 1.2 percent by 1991 from the 20 year peak rental costs of 1987 and 1988.[57]

Congress included goals for the purchase of mortgages on housing for low- and moderate-income families in the Act to ensure that FNMA's affirmative obligation to facilitate the financing of housing for low- and moderate-income families is carried out. Current economic, housing, and demographic conditions substantiate the need for and support these goals for financing housing for low- and moderate-income families as set forth in this Notice.

3. Performance and Effort of FNMA Toward Achieving the Goal in Previous Years

While these are the first low- and moderate-income goals established under this Act, some data is available concerning the income of homeowners whose mortgages were purchased by FNMA for the 1990–92 period.[58] An analysis of this data, gathered under the Home Mortgage Disclosure Act (HMDA), shows that 23 percent of mortgages purchased by FNMA in 1990 provided financing for home buyers with income less than area median family income.[59] Analysis of 1991 HMDA data by the Federal Reserve Board shows that this percentage increased in 1991, to about 26 percent.

An analysis by FNMA of its 1991 mortgage purchases found that:

a. Approximately 23.3 percent of the owner-occupied, single-unit loans purchased or securitized by FNMA and originated in 1991 were secured by properties purchased by families with incomes not in excess of 1991 median area income;

b. FNMA purchased mortgages financing housing for approximately 113,000 households in 1- to 4-unit rental properties in 1991 and, based on previous experience, FNMA believes that the majority of these households were of modest means; and

c. FNMA has more than $22.5 billion of multifamily loans in its portfolio and mortgage-backed securities, comprising 3.7 percent of the dollar amount of its conventional mortgages—in 1991, FNMA estimated that its new multifamily business financed housing for more than 127,000 units and that most of these are units housing low- or moderate-income families.[60]

In a letter to the Department,[61] a FNMA official stated that FNMA had updated and refined its analysis of its mortgage purchases by examining a one percent random sample of its loan files as part of its post-purchase review of

[53] Monthly average refinancing data obtained from FHLMC's Primary Mortgage Market Survey (February 8, 1993).

[54] Canner and Gabriel, "Market Segmentation and Lender Specialization in the Primary and Secondary Mortgage Markets," 3 Housing Policy Debate 255–257, 282 (1992) [hereinafter "Canner and Gabriel"].

[55] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Housing Characteristics of One-Parent Households: 1989 Series H–121, No. 92–2 1–2 (1992).

[56] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Money Income of Households, Families, and Persons in the United States: 1991 Series P–60, No. 180 xiv-xv (1992).

[57] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992).

[58] Since 1978, FNMA has operated under a 30 percent goal for purchases of mortgages on housing for low- and moderate-income families, but this goal was based on housing prices (as a proxy for income) pursuant to HUD regulations promulgated under the FNMA Charter Act. See 24 CFR 81.17.

[59] Canner and Gabriel, *supra* note 54, at 241, 279, and 282. The majority of refinanced mortgages are conventional mortgages.

There are several differences between the data gathered under HMDA and the data required to evaluate compliance with the low- and moderate-income housing goal under the Act including that the HMDA data: (1) Concerns the number of home mortgages, while the Act refers to dwelling units—thus, the HMDA data does not distinguish between a 100-unit multifamily property with a single mortgage and a 1-unit property; (2) excludes all loans outside of metropolitan areas (MSAs); and (3) is derived only from reports from financial institutions that have more than $10 million in assets and either have a branch located in an MSA or receive applications for 5 or more mortgage loans from such an area—the HMDA database excludes small institutions that do not lend in metropolitan areas.

[60] Home Mortgage Disclosure Act: Joint Hearings Before the Subcomms. on Consumer Affairs and Coinage and on Housing and Community Development, of the Comm. on Banking, Finance and Urban Affairs, House of Representatives, Serial No. 102–120, 102d Cong., 2d Sess. 554, 555, 556, and 563 (1992) (statement of James A. Johnson, Chairman and Chief Executive Officer of FNMA).

[61] Dated December 24, 1992, from Ellen S. Seidman, Senior Vice President, Regulation, Research, and Economics, to Kenneth A. Markison, HUD Assistant General Counsel for Administrative Law.

loans acquired during the first three quarters of 1992. This analysis found that approximately 25 percent of the units collateralizing conventional single family loans met the tests for housing for low- and moderate-income families under the Act.[62] The letter also stated that approximately 91 percent of multifamily units financed by mortgages purchased by FNMA were affordable to families at or below the area median income; for all of 1992, FNMA states that 97 percent of its multifamily units were affordable.[63] Investments eligible for the Low-Income Housing Tax Credit (LIHTC), 26 U.S.C. 42, were included among mortgage purchases; this calculation also assumed that contract rent would be used to determine affordability. The letter concluded that approximately 29 percent of mortgages purchased by FNMA in 1992 were for housing for low- and moderate-income families.

This Notice does not permit LIHTC investments to be counted as "mortgage purchases" under the Act because such undertakings are not, in fact, mortgage purchases. Based on information available to HUD, these activities, if counted, would comprise less than one percent of the units under these goals. Similarly, it is estimated that the use of "rent" inclusive of utilities rather than "contract rent" will reduce FNMA's estimate of its mortgage purchases qualifying under this Notice by less than one percent.

With the exclusion of investments eligible for the Low-Income Housing Tax Credit and the measurement of rent as gross rent as provided in this Notice, the Secretary has determined that the percentage of FNMA's purchases of mortgages on housing for low- and moderate-income families was approximately 26 percent in 1991 and 27 to 28 percent in 1992.

4. Size of the Conventional Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 30 percent of those families who recently purchased or refinanced their homes, and who obtained conventional mortgages below the conforming loan limits, had incomes below the area median. Based on this data, even if FNMA's purchases consisted primarily of mortgages secured by owner-occupied homes, FNMA could achieve the Act's target for purchases of mortgages on housing for low- and moderate-income families by buying a representative sample of the mortgages available in the market.

For rental properties, current data on the income of prospective or actual tenants has not been readily available to FNMA in the past. Where such income information is not available, the Act provides that a rent level is affordable if it does not exceed 30 percent of the maximum income level for the low-income or moderate-income category, with appropriate adjustments for unit size as measured by the number of bedrooms. Analysis of American Housing Survey data shows that 93 percent of all rental units and 78 percent of unsubsidized rental units constructed in the last three years had gross rents of less than 30 percent of area median family income.

To calculate the size of the potential market for mortgages financing housing for low- and moderate-income families, data on the number of owner-occupied dwelling units, rental units in 1–4 unit properties, and rental units in multifamily properties are necessary. In determining the proportions of dwelling units in these three different types of properties, the Secretary has utilized data from the 1981 Survey of Residential Finance[64] on the number of properties with conventional mortgages acquired during the 1977–80 period, and the average number of dwelling units for each type of property, derived from the same source.[65] Based on this data, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties.[66] Applying the percentages of affordable dwelling units (30 percent of owner-occupied dwelling units and 78 percent of rental dwelling units are affordable to low- and moderate-income families) to these percentages of properties results in the Secretary's conclusion that 52 percent of the dwelling units secured by conventional mortgages, eligible for purchase by FNMA, are affordable to low- and moderate-income families.[67] These calculations show that FNMA, through a program that includes purchases of both owner-occupied and rental properties, including multifamily properties, should be able to achieve the 30 percent target established in the Act.

5. FNMA's Ability To Lead the Industry

FNMA's ability to lead the industry depends on its role in the mortgage market as well as its profitability. FNMA and the Federal Home Loan Mortgage Corporation (FHLMC) together purchased approximately 65 percent of all conventional conforming single family mortgages in 1992—up from 17 percent in 1980, 33 percent in 1985, and 52 percent in 1991.[68]

The report on the Federal Housing Enterprises Regulatory Reform Act of 1992, S. 2733, by the Senate Committee on Banking, Housing, and Urban Affairs discussed FNMA's profitability, and noted that FNMA and FHLMC "have grown more than 130 percent in the last five years, while profits have grown even faster."[69] The enterprises have had "a fivefold expansion [in profits] in just five years, a period that included one of the nation's most severe recessions."[70] The Committee noted "the contrast between the [enterprises'] increasing financial success and the worsening availability of affordable housing,"[71] and stated that "the capabilities of the [enterprises] partially to fill this gap are larger than ever."[72] In light of FNMA's

[62] Of single family loans acquired by FNMA in 1992, 24 percent of owner-occupied units and 75 percent of rental units met the tests for housing for low- and moderate-income families. Letter, dated April 26, 1993, from Joseph E. Amato, FNMA Director of Regulatory Policy, to Ben Laden, HUD Director, Financial Institutions Regulation Staff.

[63] *Id.*

[64] A commonly-used source of information on mortgage originations is HUD's Survey of Mortgage Lending Activity. However, for this analysis, that survey is inadequate, because the data are expressed in dollar terms, not in terms of the number of dwelling units, and the survey distinguishes only between single family (1–4 unit) and multifamily (5 or more unit) properties—no information is provided on rental units in 1–4 unit properties.

[65] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of single family and multifamily conventional mortgage originations.

[66] HUD Office of Policy Development and Research, 1991 Report to Congress on the Federal National Mortgage Association 100 (1992).

[67] The 52 percent figure was derived by adding the following: (1) 16.05% (percentage of owner-occupied units [53.5%] times percentage of those units that are affordable to low- and moderate-income families [30%]); (2) 14.74% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are affordable to low- and moderate-income families [78%]); and (3) 21.53% (percentage of rental units in multi-family properties [27.6%] times percentage of those units that are affordable to low- and moderate-income families [78%]). The 52 percent figure is a conservative estimate because it is based on the 78 percent estimate for newly-constructed affordable rental units rather than the 93 percent estimate for all affordable rental units.

[68] FNMA Economics Department. By itself, FNMA purchased approximately 42 percent of all conventional conforming single family mortgages in 1992.

[69] S. Rep. No. 102–282, 102d Cong., 2d Sess. 28 (1992).

[70] *Id.*

[71] *Id.*

[72] *Id.* at 29.

and FHLMC's market dominance, strength, and high profitability, FNMA, along with FHLMC, is able to lead the industry in making mortgage credit available for low- and moderate-income families.

6. Need To Maintain FNMA's Sound Financial Condition

FNMA's financial condition depends on its profitability, the adequacy of its capital, and the safety and soundness of its operations. The Senate report on the Act stated: "The combined profits of [FNMA] and [FHLMC] approached $2 billion in 1991 compared to $350 million in 1986."[73] FNMA's profits increased from $1.36 billion in 1991 to $1.62 billion in 1992 and FNMA's net income in the first half of 1993 was 15 percent above the level of the first half of 1992. FNMA's return on average equity averaged 28.8 percent over the 1988–92 period—far above the rates achieved by most financial corporations.

The Secretary has concluded that the low- and moderate-income housing goals will not endanger the adequacy of FNMA's capital or the safety and soundness of its operations and that achievement of the goals will not impair FNMA's sound financial condition.

D. Determination

Based on available data, the Secretary has concluded that FNMA's purchases of mortgages on housing for low- and moderate-income families accounted for approximately 27 to 28 percent of the total number of dwelling units financed by FNMA's mortgage purchases in 1992. Accordingly, FNMA has not yet achieved the 30 percent target established for the purchase of mortgages on housing for low- and moderate-income families. Therefore, in accordance with the Act, these goals are established so that FNMA will improve its performance relative to the target to the maximum extent feasible and so that FNMA will meet the 30 percent target by the end of 1994.

The Secretary has determined that the interim goals set forth below address national housing needs and current economic, housing, and demographic conditions, and take into account FNMA's performance in the past in purchasing low- and moderate-income mortgages, as well as the size of the conventional mortgage market serving low- and moderate-income families. Moreover, the Secretary has considered FNMA's ability to lead the industry as well as FNMA's financial condition. These goals will necessitate an increase in FNMA's low- and moderate-income housing business to reach the targets of 30 percent by 1995. The Secretary has determined that these goals are necessary and achievable.

E. The Interim Low- and Moderate-Income Housing Goals

The annual goal for 1993 for FNMA's purchases of conventional mortgages financing housing for low- and moderate-income families is established at 30 percent of the total number of dwelling units financed by FNMA's mortgage purchases; the annual goal for 1994 is 30 percent.

II. The Central Cities Housing Goals

A. Establishment

Under the Act, these goals are intended to achieve increased purchases by FNMA of mortgages on housing located in central cities.

The Act provides that the Secretary shall monitor performance of both FNMA and FHLMC in carrying out these goals and "shall evaluate such performance * * * based on the location of the properties subject to mortgages purchased by each enterprise." (Section 1334(c).) Units will be counted under these goals if the units are located in a "central city" as defined under the Act. Through the use of geocoding or any similarly accurate and reliable method, FNMA shall determine, and report to the Secretary, whether units financed under mortgages purchased by FNMA are located in central cities. Where FNMA cannot determine the exact location of a property but can determine that the property is located in a census tract, or within a census place code, block-group enumeration district, nine-digit zip code, or another appropriate geographic segment, that includes at least part of a central city, the percentage of dwelling units that may be counted as central city units is equal to the percentage of the population of the geographic segment that resides within the central city—this method is referred to as the "proportional method."

In establishing the interim central cities goal, section 1334(b)(1)-(6) of the Act requires the Secretary to consider:

1. Urban housing needs;
2. Economic, housing and demographic conditions;
3. The performance and efforts of the enterprises toward achieving the central cities goal in previous years;
4. The size of the conventional mortgage market for central cities relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities; and
6. The need to maintain the sound financial condition of the enterprises.

The geographic goals for mortgage purchases by FNMA established by the Act will apply to rural areas and other underserved areas as well as central cities beginning on January 1, 1995. At this time, for the 1993–94 period, these goals apply only to the purchases of mortgages on housing located in central cities. Thus, in this discussion reference is made only to central cities goals and targets.

B. Underlying Data

In establishing the central cities goal and in considering the factors under the Act, the Secretary relied upon data, including data gathered under American Housing Surveys, other government data, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), and data gathered from FNMA, to determine central city housing needs; economic, housing and demographic conditions; and the size of the conventional mortgage market serving central cities relative to the size of the overall conventional mortgage market. The Secretary used data provided by FNMA and data gathered under HMDA to determine prior performance in meeting the needs of central city residents and FNMA's financial condition.

C. Consideration of the Factors

1. Urban Housing Needs

In its report on the Act, the Senate Committee on Banking, Housing, and Urban Affairs commented on the housing needs of urban areas:

> Housing problems in general, and access to capital in particular, are acute in our nation's cities * * *. Their economic distress is a vital issue, not only to the cities immediately affected, but to the entire nation * * *. [C]apital for housing finance is a serious need. Unfortunately, the Committee finds that city residents, for a variety of reasons including discriminatory practices, do not have the access to mortgage capital that non-urbanites enjoy.[74]

Data on various aspects of housing in the central cities has been collected in the 1989 American Housing Survey.[75] Housing conditions in central cities are illustrated by comparing this data with the corresponding data for the suburbs, as follows:

a. *Income of occupants.* One of every six central cities' households (16.6

[73] *Id.* at 28.

[74] *Id.*

[75] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989, at 35, 187, 249, 372, 374, 377, 378, 384, 385, 414, 416, 419, 420, 426, and 427 (July 1991).

percent) fell below the poverty line in 1989, nearly twice the rate for suburban households (8.7 percent). Similarly, median household income was much lower in central cities—$25,062, versus $33,244 in the suburbs.

b. *Homeownership.* A sharp divergence exists between the percentage of homeownership in central cities and other areas—in 1991 the homeownership rate was 48.7 percent in central cities, 70.2 percent in the suburbs, and 73.2 percent outside of MSAs.[76]

c. *Housing costs.* Despite the lower incomes in central cities, monthly housing costs as a percentage of income are somewhat higher in central cities—averaging 23 percent of income in urban areas, versus 21 percent in the suburbs. The size of this gap partly reflects the fact that renters, who generally have higher housing costs relative to income, make up a higher share of households in urban areas than in the suburbs. But even with some adjustment for the rental/owner-occupied mix, many central city residents still pay higher costs for housing—*e.g.*, 20 percent of renters in central cities paid more than 50 percent of their income for housing costs, versus 18 percent in the suburbs.

d. *Age of structure.* In the suburbs, 79 percent of housing structures have been built since 1950—versus 59 percent in central cities. On average, suburban structures, with a median construction date of 1968, are 12 years newer than central city structures, with a median construction date of 1956.

e. *Condition of structure.* In the suburbs, 2.7 percent of occupied dwelling units reported severe physical problems in plumbing, heating, electrical service, upkeep, or public areas—versus 4 percent in central cities. Approximately 5.9 percent of suburban units reported inadequate heating in the preceding winter—versus 8.7 percent in central cities.

f. *Unemployment.* In 1992 the unemployment rate in central cities was 8.9 percent, well above the 6.6 percent rate for the suburbs, the 7.5 percent rate for metropolitan areas as a whole, and the 7.1 percent rate for nonmetropolitan areas. The difference in jobless rates was especially pronounced in the poorest areas—14.0 percent for metropolitan poverty areas, and 8.6 percent for nonmetropolitan poverty areas.[77]

g. *Minorities.* Members of minority groups are especially disadvantaged by housing conditions in central cities, because a majority of such individuals live in central cities. The 1989 American Housing Survey found that 60 percent of Black households were located in central cities, 26 percent were in the suburbs, and 14 percent were outside of metropolitan areas. For Hispanics, the corresponding percentages were 52 percent, 39 percent, and 9 percent. For other households, 27 percent were located in central cities, 49 percent were in the suburbs, and 24 percent were outside of metropolitan areas.

Based on this data, the Secretary believes that it is essential for FNMA to play a greater role in addressing the serious housing needs of the central cities.

2. Economic, Housing, and Demographic Conditions

Compared to suburban and nonmetropolitan areas, central cities have a much higher percentage of households with "worst case" housing needs. Such households include unassisted renters with incomes that do not exceed 50 percent of area median income who have been displaced, renters who pay more than half of their income in rent and utilities, or households that live in severely substandard housing. Over half of households with worst case problems were in central cities in 1989, even though cities housed only one-third of all households.[78] In the 44 large metropolitan areas surveyed separately by the American Housing Survey, 10 percent of city households had worst case problems, compared to only 4 percent of suburban households.[79]

This factor is the same as the second factor considered under the goal for housing for low- and moderate-income families. Accordingly, see paragraph I.C.2., for additional discussion of this factor.

Congress included housing goals for central cities in the Act to ensure that the benefits of mortgage financing from FNMA's secondary market activities would be available in the central cities. Current economic, housing, and demographic conditions substantiate the need and support the goals for housing located in central cities as set forth in this Notice.

3. Performance and Effort of FNMA Toward Achieving the Goal in Previous Years

Data gathered under the Home Mortgage Disclosure Act (HMDA) shows that 34 percent of all conventional conforming home purchase and refinanced mortgages purchased by FNMA in 1990 (for which the property location was reported) were on properties located in central cities.[80] The Federal Reserve Board's estimate for 1991, based on HMDA data, is that 35 percent of the mortgages purchased by FNMA were on properties located in central cities. These calculations included all mortgages on housing located in any census tract where at least part, but not necessarily all, of the census tract was in a central city. Calculation of central city mortgage purchases in this manner is known as the "outer circle method."

Using the outer circle method, FNMA's own analysis of its 1991 single family mortgage purchases found that 32.2 percent of dwelling units financed by those mortgages were in central cities.

In a letter[81] to the Department, a FNMA official stated that FNMA had updated and refined its analysis by examining a one percent random sample of its loan files as part of its post-purchase review of loans acquired during 1992. FNMA's analysis found that approximately 25 percent of single family dwelling units and 47 percent of multifamily units financed by mortgages purchased by FNMA were located in central cities—for a combined FNMA central city total of 26 percent. In making these approximations, FNMA used the proportional method rather than the outer circle method. The proportional method allocates mortgages in census tracts that straddle central city boundaries based on the portion of the population that resides in the central city in such census tracts.[82]

[76] U.S. Bureau of the Census, Housing Vacancies and Homeownership Annual Statistics: 1991, Current Housing Reports, Series H111/91–A, 34 (1992). The lower homeownership rate in central cities may, to some degree, reflect the preferences of urban dwellers.

[77] Department of Labor, Employment and Earnings 244–46 (January 1993). Poverty areas are census tracts in which 20 percent or more of the residents were poor, according to the 1990 decennial census.

[78] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989, 15 (1991).

[79] HUD Office of Policy Development and Research, The Location of Worst Case Needs in the Late 1980s (1992).

[80] Canner and Gabriel, *supra* note 54, at 273. The HMDA data is based on a review of loans originated and sold to FNMA in 1990 by lenders with assets of at least $10 million. Of those 1990 loans, 78 percent provided sufficient geographic information to determine whether the property was located in a central city; the remaining 22 percent consisted of loans where lenders were not required to include a census tract number, lenders failed to supply a number, or the number was incorrect.

[81] Dated April 26, 1993, from Joseph E. Amato, FNMA Director of Regulatory Policy, to Ben Laden, HUD Director, Financial Institutions Regulation Staff.

[82] This approach has been implemented using census tract data. However, FNMA may choose to use other geographic segments such as census place

The Secretary has determined that, where FNMA cannot ascertain the exact location of a property but can determine in which census tract the property is located, the proportional method provides a better means than the outer circle method for measuring the percentage of mortgage purchases on housing located in central cities. Under the proportional method, approximately 26 percent of FNMA's purchases of mortgages on housing were located in central cities in 1992.

4. Size of the Conventional Mortgage Market for Central Cities Relative to the Size of the Overall Conventional Mortgage Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 24 percent of all recent mortgages from owner-occupier home buyers and owners who refinanced, and who obtained conventional mortgages below the conforming loan limits, were secured by properties located in central cities. For 1- to 4-family rental properties, 42 percent of all rental units and 32 percent of unsubsidized rental units constructed in the preceding three years were located in central cities. For multifamily rental properties, 58 percent of all rental units and 47 percent of unsubsidized rental units constructed in the preceding three years were located in central cities.

Based on data from the 1981 Survey of Residential Finance, discussed above, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties. Utilizing the percentages of dwelling units located in central cities (24 percent of owner-occupied units, 32 percent of recently constructed rental units in 1- to 4-family rental properties, and 47 percent of recently constructed rental units in multifamily rental properties) results in the Secretary's conclusion that 32 percent of the dwelling units secured by conventional mortgages are located in central cities.[83] These calculations show that through a program that includes purchases of mortgages on both owner-occupied and rental properties, including multifamily properties, FNMA should be able to improve its performance from 26 percent to achieve the 30 percent target established in the Act.[84]

5. FNMA's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.5., for a discussion of this factor.

6. Need To Maintain FNMA's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.6., for discussion of this factor.

D. Determination

Based on available data, the Secretary has concluded that FNMA's purchases of mortgages on housing located in central cities were approximately 26 percent of the total number of dwelling units financed by FNMA's mortgage purchases in 1992. Accordingly, FNMA has not yet achieved the 30 percent target established for the purchase of mortgages on housing in central cities. Therefore, in accordance with the Act, these goals have been established so that FNMA will improve its performance relative to the target to the maximum extent feasible and so that FNMA will meet the 30 percent target by the end of 1994.

Having considered the factors for establishing the goal, the Secretary has determined that the goals established below address urban housing needs and economic, housing and demographic conditions and take into account FNMA's performance in the past in purchasing mortgages on properties in central cities, as well as the size of the conventional mortgage market for central cities. Moreover, in establishing these goals the Secretary has considered FNMA's ability to lead the industry as well as FNMA's financial condition. The Secretary has determined that these goals are both necessary and achievable.

The Secretary is determined to achieve an end to redlining and other forms of discrimination that severely reduce the availability of housing finance in central cities. As noted in the Senate report on the Act: "Inadequate access to mortgage credit is a particular problem which results, in large part, from the vestiges of redlining and the unintended consequences of [FNMA's and FHLMC's] orientation toward suburban and 'plain vanilla' mortgages."[85] In establishing the central cities goals at the levels listed below, the Secretary expects FNMA, along with FHLMC, to significantly increase the availability of financing for housing in central cities and to act forcefully and effectively towards ending problems of redlining and mortgage discrimination in the primary mortgage market.

E. The Interim Central Cities Goals

1. The Goals

The annual goal for 1993 for FNMA's purchase of conventional mortgages on housing located in central cities is established at 28 percent of the total number of dwelling units financed by FNMA's mortgage purchases in 1993; the annual goal for 1994 is 30 percent.

2. Counting Methodology

a. The dwelling unit(s) located in central cities and financed by FNMA's mortgage purchases shall count toward achievement of this goal. FNMA shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances dwelling unit(s) located in a central city.

b. *Proportional Method.* Where FNMA cannot precisely determine whether a mortgage is on dwelling unit(s) located in a central city but can determine that the mortgage is on dwelling unit(s) located in a census tract, or within a census place code, block-group enumeration district, or nine-digit zip code, or another appropriate geographic segment, that is partially located in a central city, a fraction of the dwelling units covered by the mortgage shall count toward achievement of this goal. Such fraction is the ratio of the population of the geographic segment that is located in the central city to the total population of the geographic segment.

III. The Special Affordable Housing Goal

A. Establishment

Under the Act, the goal for the purchase of mortgages on housing to meet the then-existing, unaddressed

codes, block-group enumeration districts, or nine-digit zip codes.

[83] The 32 percent figure was derived by adding the following: (1) 12.84% (percentage of owner-occupied units [53.5%] times the percentage of those units that are located in central cities [24%]); (2) 6.05% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are located in central cities [32%]); (3) 12.97% (percentage of rental units in multifamily properties [27.6%] times percentage of those units that are located in central cities [47%]).

[84] The Federal Reserve Board's preliminary analysis of 1991 HMDA data indicates that 36.2 percent of conforming conventional home purchase mortgages and 33.5 percent of refinancings were on properties located in central cities. Because these two percentages are similar, a high volume of refinancings would not prevent FNMA from attaining the goals in this Notice.

[85] S. Rep. No. 102–282, 102d Cong., 2d Sess. 38 (1992).

needs of, and affordable to, low-income families in low-income areas and very low-income families is intended to achieve increased purchases by FNMA of such mortgages.

In establishing the special affordable housing goal, section 1333(a)(2)(A)-(E) of the Act requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the special affordable housing goal in previous years;

2. The performance of the enterprise toward achieving the special affordable housing goal in previous years;

3. National housing needs within the categories covered by the special affordable housing goal;

4. The ability of the enterprise to lead the industry in making mortgage credit available for low- and very low-income families; and

5. The need to maintain the sound financial condition of the enterprise.

B. Underlying Data

In considering the factors under the Act to establish the special affordable housing goal, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), and data gathered from FNMA. There is no experience with these goals and inadequate information is available on relevant prior performance. The Secretary utilized data provided by FNMA to determine its financial condition and its ability to lead the industry.

C. Consideration of the Factors

1. Data Submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years

FNMA has not operated under the special affordable housing goal in prior years and FNMA has not submitted any relevant data to the Secretary to date.

2. Previous Performance and Effort of FNMA

In 1987, FNMA created the Office of Low- and Moderate-Income Housing, which was responsible for "developing and offering programs that meet special housing needs."[86] In October 1991 FNMA created the National Housing Impact Division which operates both homeownership and rental housing programs.[87] In March 1991, FNMA announced that by July 1993 it would provide $10 billion in commitments for additional affordable housing initiatives, with deliveries by the end of 1994.[88] FNMA currently estimates that it will achieve this level of performance during 1993.[89] FNMA's special affordable housing programs include some initiatives which may qualify toward achievement of the special affordable housing goal in this Notice.

Based on HMDA data, in 1990 FNMA purchased a lower percentage (11.9 percent) of new conventional mortgages and refinanced mortgages from low-income families than the corresponding share of mortgage originations for such families (14.1 percent for new conventional mortgages and 14.3 percent for refinanced mortgages). Conversely, in that same year, FNMA purchased a higher percentage (13.5 percent) of new conventional mortgages and refinanced mortgages from families with 100 to 120 percent of area median income than the corresponding share of mortgage originations (11.8 percent for new conventional mortgages and 11.7 percent for refinanced mortgages).[90]

The Senate report on the Act noted that:

> According to the data made available under the Home Mortgage Disclosure Act [in] October [1991], 9.8 percent of [FNMA's and FHLMC's] prime business activity—purchases of mortgages securing single family homes—is comprised of loans made to borrowers with incomes below 80 percent of area median. A substantial portion of the units financed by any multifamily mortgage[] [FNMA and FHLMC] purchase likely serve tenants with such incomes * * *.
>
> [T]here is significant consensus among a wide coalition of affordable housing participants that [FNMA and FHLMC] can expand their activity in the low-income arena. The HMDA data and other evidence reveal that [FNMA's and FHLMC's] existing single family business underserves low-income families living in census tracts where the median income is 80 percent or below as well as very low-income families (families with incomes below 50 percent of area median).
>
> The multifamily arena is equally troubling * * *. [FNMA], while avoiding some of the difficulties experienced by [FHLMC], has been criticized for "creaming" the market—avoiding low-income neighborhoods as well as developments involving an array of federal and other governmental subsidies.[91]

3. National Housing Needs for Very Low- and Low-Income Families, Low-Income Families in Low-Income Areas, and Families Whose Incomes Do Not Exceed 50 Percent of the Median Income for the Area

Data obtained under the Home Mortgage Disclosure Act (HMDA) for 1991 indicates some of the difficulties faced by low-income families seeking mortgages. The conventional mortgage origination rate (percentage of conventional mortgage applications approved) decreases as the income of the applicant(s) decreases, with the approval rate being the lowest for low-income families:

Area median income	Percent of mortgage approval
Less than 80 percent	60
80 to 99 percent	75
100 to 120 percent	78
More than 120 percent	79

Low-income approval rates were especially low for Hispanics (54 percent) and Blacks (45 percent)—versus 62 percent for Whites and 69 percent for Asians. Similarly, approval rates were lowest for applicants seeking mortgages in lower income census tracts—66 percent in tracts having median income less than 80 percent of area median income—versus 72 percent in tracts having median income between 80 and 120 percent of area median income, and 80 percent in tracts having median income in excess of 120 percent of area median income.[92]

Data from the American Housing Survey indicates that needs for affordable housing are more pressing in these lowest income categories than among moderate-income families. In 1989, 19 million households with below-median incomes had affordability problems, paying more than 30 percent of their income for housing and utilities. Almost three-fourths (74 percent) of these families with affordability problems had incomes below 50 percent of area median income. Another 12 percent of the families with affordability problems had very low incomes, between 50 percent and 60 percent of area median income.

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[86] Home Mortgage Disclosure Act: Joint Hearings Before the Subcomms. on Consumer Affairs and Coinage and on Housing and Community Development, of the Comm. on Banking, Finance and Urban Affairs, House of Representatives, 102d Cong., 2d Sess. 554, 571 (1992) (statement of James A. Johnson, Chairman and Chief Executive Officer of FNMA).

[87] *Id.* at 571–73.

[88] "Opening Doors to Affordable Housing in the 1990s," Remarks by James A. Johnson, Chairman and Chief Executive Officer of FNMA, March 14, 1991.

[89] FNMA, Housing Impact Report 1992–1993 at 1 (1993).

[90] Canner and Gabriel, *supra* note 54, at 255–257, 279. Data for families with incomes in excess of 120 percent of area median income has not been analyzed, because a significant fraction of such mortgage originations may exceed the conforming loan limit for purchases by FNMA.

[91] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[92] Canner and Smith, "Expanded HMDA Data on Residential Lending: One Year Later," Federal Reserve Bulletin 808, 810, and 812 (Nov. 1992).

In 1989, some 5 million renter households had "worst case" housing needs, as defined in section II.C.2. According to Congress, these unassisted renters with incomes below 50 percent of area median income should receive priority in rental assistance due to their severe housing problems.[93] In 1989, over 75 percent of unassisted renters in this income category had an affordability problem, *i.e.*, paid more than 30 percent of their income for gross rent, while 48 percent had a severe affordability problem, *i.e.*, paid more than half of their income for housing. Among owners in this lowest income category, one-third had an affordability problem and one-sixth had a severe affordability problem.[94] Among families with income between 50 percent and 80 percent of area median income, one-third of renters and one-tenth of owners had an affordability problem.

The relative decline in inexpensive dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of median income. Whereas in 1979 the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income, by 1989 the gap had widened to 39 percent, a shortage of 2.7 million units.[95]

4. FNMA's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.5. for discussion of this factor.

5. Need to Maintain FNMA's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.6. for discussion of this factor.

D. Determination

This goal is intended to increase the purchase by FNMA of mortgages financing rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

FNMA has not functioned under this special affordable housing goal in the past and data available to the Secretary does not clearly show the extent to which FNMA has achieved the objectives of this goal in the past. The legislative history of the Act specifically provides that one of the purposes of this goal is "to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments * * *."[96] Accordingly, this goal requires FNMA to purchase $2 billion in mortgages during the transition period above and beyond FNMA's existing performance and commitments. This Notice requires FNMA to provide the Secretary with a good faith estimate of the amount of purchases it made in 1992 that would have qualified under each part of this special affordable housing goal had it applied in 1992. The Notice requires FNMA to purchase that amount of mortgages in both 1993 and in 1994, in addition to the $2 billion of mortgage purchases for 1993–94.

Having considered the factors for establishing the goal, the Secretary has established this special affordable housing goal.

E. The Special Affordable Housing Goal

1. The Goal

a. The special affordable housing goal, during the two year period beginning on January 1, 1993, shall include mortgage purchases by FNMA of not less than:

(1) For 1993–94, two billion dollars ($2,000,000,000) of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families, subdivided as follows—at least one billion dollars ($1,000,000,000) shall be mortgages on single family housing and at least one billion dollars ($1,000,000,000) shall be mortgages on multifamily housing; plus

(2) For 1993, the dollar amount of FNMA's purchases as estimated under paragraph E.1.b.; plus

(3) For 1994, the dollar amount of FNMA's purchases as estimated under paragraph E.1.b.

b. FNMA shall provide the Secretary within 60 days a good faith estimate of the dollar amount of its 1992 mortgage purchases that would have qualified under each part of this special affordable housing goal if the goal had applied in 1992.

c. *Multifamily goal.*

(1) Of the multifamily mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be on multifamily housing where rental dwelling units are affordable to low-income families; and

(b) 55 percent of the dollar volume of such mortgages shall be on multifamily housing in which:

(i) At least 20 percent of the units are affordable to especially low-income families; or

(ii) At least 40 percent of the units are affordable to very low-income families.

(2) Only a portion of the dollar amount of mortgages purchased by FNMA on multifamily housing that are attributable to units meeting the requirements under paragraph E.1.c.(1)(a) or (b) shall count toward the special affordable housing goal under paragraph E.1.c.(1). The portion of a mortgage to be attributed to achievement of this goal shall be equal to the ratio of the total rents of dwelling units affordable to low-income families to the total rents for the mortgaged property.

(3) During the transition period, multifamily mortgages purchased in excess of the $1,000,000,000 special affordable housing goal for multifamily mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.c.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FNMA to assure that the ratios in paragraph E.1.c.(1) are satisfied for such additional units.

d. *Single family goal.*

(1) Of the single family mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income;[97] and

(b) 55 percent of the dollar volume of such mortgages shall be mortgages of very low-income families.

(2) For a mortgage to count toward the special affordable housing goal under paragraph E.1.d.(1), the mortgagor(s) must meet the qualifications in either paragraph E.1.d.(1)(a) or (b). Units are affordable under paragraph E.1.d.(1)(a) where occupied by low-income families living in census tracts in which the

[93] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989 (1991).

[94] *Id.*

[95] "Affordable rent" has been defined above as gross rent not in excess of 30 percent of family income. Tabulations by HUD Office of Policy Development and Research, based on U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[96] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[97] Determination of median census tract income and area median income shall be based on data from the most recent decennial census.

median income does not exceed 80 percent of the area median income. Units are affordable under paragraph E.1.d.(1)(b) where occupied by very low-income families.

(a) In the case of a mortgage financing a one unit property occupied by an owner, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1)(a) or (b).

(b) In the case of a mortgage financing a two-to-four unit property, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1)(a) or (b) and each rental unit is affordable under paragraph E.1.d.(2). A portion (as provided in paragraph E.1.d.(3)) of the mortgage may contribute to achieving the special affordable housing goal if only some of the rental units are affordable.

(3) The portion of a mortgage to be attributed to achievement of this single family goal shall be equal to the ratio of the total number of rooms in owner-occupied or affordable units to the total number of rooms in all dwelling units in the mortgaged property. For purposes of this ratio, the number of rooms in a dwelling unit shall equal the number of bedrooms plus one; for example, an efficiency is considered one room, a one-bedroom unit is considered two rooms, etc.

(4) During the transition period, single family mortgages purchased in excess of the $1,000,000,000 special affordable housing goal for single family mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.d.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FNMA to assure that the ratios in paragraph E.1.d.(1) are satisfied for such additional units.

e. Each mortgage purchase, or portion of a mortgage where only a portion counts toward achievement of this goal, shall count only once toward achievement of the goal, *i.e.*, shall count under only one subgoal. For example, the purchase of a single family mortgage of a very low-income family on a property located in a census tract in which the median income does not exceed 80 percent of the area median income would count toward achievement of the subgoal under either paragraph E.1.d.(1)(a) or E.1.d.(1)(b), but not under both.

2. Full, Partial and No Credit Activities

a. The Act requires the Secretary to establish guidelines under which mortgage purchases receive full credit, partial credit, or no credit toward achievement of the special affordable housing goal.

b. *Full Credit.* The following activities shall receive full credit toward achievement of the special affordable housing goal:

(1) The purchase or securitization of federally insured or guaranteed mortgages where:

(a) Such mortgages cannot be readily securitized through the Government National Mortgage Association (GNMA) or any other Federal agency;

(b) Participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

(c) The mortgages involved are on housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal. Mortgages under the Federal Housing Administrations's Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z–20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of paragraphs E.2.b.(1)(a) and E.2.b.(1)(b).

(2) The purchase or refinancing of existing, seasoned portfolios of loans where:

(a) The seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal; and

(b) Such purchases or refinancings support additional lending for housing that otherwise qualifies under the goal.

(3) The purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where such loans:

(a) Are not guaranteed by the RTC, FDIC, or other Federal agencies;

(b) Are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

(c) Are made for the purchase of housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

c. For purposes of determining whether a seller is engaging in a specific program to use proceeds of sales to originate additional loans that meet the special affordable housing goal:

(1) A seller must currently operate or actively participate in an on-going program that will result in originating additional loans that meet the goal; actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal; and

(2) To determine whether a seller meets this requirement, FNMA shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement.

d. *No Credit.* Neither the purchase nor the securitization of mortgages associated with the refinancing of FNMA's existing mortgage or mortgage-backed securities portfolio shall receive credit toward the achievement of the special affordable housing goal; refinancings by FNMA of FHLMC's mortgage or mortgage-backed securities portfolio shall not receive credit, but FNMA's purchases of individual mortgages financing properties where the mortgage on the property had in the past been purchased by FHLMC may receive credit toward achievement of the goal. For purposes of this paragraph, "portfolios of mortgages" includes mortgages retained by FNMA or FHLMC and mortgages utilized to back mortgage-backed securities.

IV. General Requirements

A. Properties With Multiple Dwelling Units

For the purposes of meeting the goals, whenever the real property securing a conventional mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

B. Credit Toward Goals

For the purposes of meeting the goals, a mortgage purchase (or dwelling unit financed by such purchase) by FNMA shall contribute to the achievement of each housing goal for which such purchase (or dwelling unit) qualifies. All mortgages purchased by FNMA on or after January 1, 1993 may count under these goals provided such mortgages meet the requirements of this Notice. Mortgages originated prior to January 1, 1993 and purchased after that date may count only if FNMA has the information needed to determine whether such a mortgage counts toward achievement of any of the goals.

C. Income Level Definitions

1. *Moderate-income* means:

a. In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of

area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	70
2	80
3	90
4	100
5 or more	(1)

[1] 100 percent plus—8 percent multiplied by the number of persons in excess of 4.

2. *Low-income* means:

a. In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	56
2	64
3	72
4	80
5 or more	(1)

[1] 80 percent plus—6.4 percent multiplied by the number of persons in excess of 4.

3. *Very low-income* means:

a. In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	42
2	48
3	54
4	60
5 or more	(1)

[1] 60 percent plus—4.8 percent multiplied by the number of persons in excess of 4.

4. *Especially low-income* means:

a. In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	35
2	40
3	45
4	50
5 or more	(1)

[1] 50 percent plus—4 percent multiplied by the number of persons in excess of 4.

D. Owner-occupied Properties

FNMA's performance under these goals for purchases of mortgages on owner-occupied housing will be evaluated based on the income of the mortgagor(s) at the time of origination of the mortgage. To determine whether mortgagor(s) may be counted under the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under paragraph C. (*i.e.*, 50 percent of area median income for especially low-income families, 60 percent for very low-income families, 80 percent for low-income families, and 100 percent for moderate-income families).

E. Rental Units

1. Use of Income, Rent

FNMA's purchases of mortgages on rental dwellings may be counted under the goals based on whether such mortgages qualify as mortgages on housing for low- and moderate-income families or on housing qualifying under the special affordable housing goal, based on the income of actual or prospective tenants where such data is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program. FNMA shall require lenders to provide tenant income information to FNMA but only where such information is known to the lender. Where such data is not available for all units in a project, FNMA's performance will be evaluated based on rents adjusted for unit size.

2. Income of Actual Tenants

Where the income of actual tenants is available, to determine whether tenant(s) may be counted for the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the tenant(s) is compared to the median income for the area, adjusted for family size as provided in paragraph C.

3. Income of Prospective Tenants

a. Where income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be based on the maximum income level established under such housing program for that unit. FNMA shall require lenders to provide such prospective tenants' income information to FNMA but only where such information is known to the lender. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, FNMA must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

b. For purposes of determining whether a rental dwelling unit is affordable to especially low-, very low-, low-, or moderate-income families and qualifies under one or more of these goals, the income of the prospective tenants must be adjusted for unit size as a proxy for family size if family size is not known:

(1) For moderate-income, the income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	(1)

[1] 104 percent plus—(12 percent multiplied by the number of bedrooms in excess of 3.

(2) For low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	(1)

[1] 83.2 percent plus—9.6 percent multiplied by the number of bedrooms in excess of 3).

(3) For very low-income, income of prospective tenants must not exceed the

following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	(1)

[1] 64.4 percent plus—7.2 percent multiplied by the number of bedrooms in excess of 3.

(4) For especially low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(1)

[1] 52 percent plus—6 percent multiplied by the number of bedrooms in excess of 3.

4. Use of Rent

Where the income of the prospective or actual tenants of a dwelling unit is not available, FNMA's performance under these goals will be evaluated based on whether the rent is affordable. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of especially low-, very low-, low-, or moderate-income families as follows:

a. For moderate-income, maximum affordable rents to count as housing for moderate-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	(1)

[1] 31.2 percent plus—3.6 percent multiplied by the number of bedrooms in excess of 3.

b. For low-income, maximum affordable rents to count as housing for low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	(1)

[1] 24.96 percent plus—2.88 percent multiplied by the number of bedrooms in excess of 3.

c. For very low-income, maximum affordable rents to count as housing for very low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	(1)

[1] 18.72 percent plus—2.16 percent multiplied by the number of bedrooms in excess of 3.

d. For especially low-income, maximum affordable rents to count as housing for especially low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percent of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(1)

[1] 15.6 percent plus—1.8 percent multiplied by the number of bedrooms in excess of 3.

F. Purchase of Refinanced or Seasoned Mortgages

1. Refinanced Mortgages

Generally, the purchase of a refinanced mortgage by FNMA may be counted as a mortgage purchase for purposes of these goals to the extent the mortgage qualifies. However, there are specific restrictions under the special affordable housing goal as set forth at paragraph III.E.2.

2. Seasoned Mortgages

The purchase of a seasoned mortgage may be treated as a mortgage purchase for purposes of these goals. A seasoned mortgage for a single family dwelling unit shall be considered for purposes of the goals based on mortgagor(s)' income (for owner-occupied dwelling units), tenant income or rent levels (for rental dwelling units), and area median income as of the time of mortgage origination. For multifamily dwelling units, a seasoned mortgage will be considered based on rental information (for rental dwelling units), income (for owner-occupied dwelling units) and area median income as of the time that FNMA purchases the mortgage.

G. Newly Available Data

Where data is used by FNMA to determine whether a mortgage purchase qualifies under any goal and such data is released after the start of a calendar quarter, FNMA need not use the data until the start of the following quarter—FNMA may continue to use the data that was available at the beginning of the quarter. For example, if the Secretary publishes the annual list of area median incomes in March, FNMA need not use the new median income data until April 1 (the previous year's list could be used for the quarter ending March 31).

H. Actions To Be Taken To Meet the Goals

To meet the goals established in this Notice, FNMA shall:

1. Design programs and products that facilitate the use of assistance provided by the Federal, State, and local governments;

2. Develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

3. Develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers; and

4. Take affirmative steps to assist:

a. Primary lenders to make housing credit available in areas with concentrations of low-income and minority families; and

b. Insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977.

Such steps shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures.

V. Definitions

Central city means, for purposes of determining the proportion of FNMA's purchases of mortgages on housing located in central cities during a particular calendar year, any political subdivision designated as such, as of January 1 of that year by the Statistical Policy Office, Office of Management and Budget of the Executive Office of the President in the document entitled

Metropolitan Areas or successor publication.

Concentrated minority census tract means a census tract in which minority residents comprise 80 percent or more of the total population in the census tract.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges which are included in the contract rent. To count multifamily units under the low- and moderate-income and special affordable housing goals, contract rent must be determined using actual rent for each unit where such information is available; where actual rent information for each unit is not available, average contract rent by unit type may be used for units in the property.

Conventional mortgage means a mortgage other than a mortgage as to which FNMA has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Dwelling unit means a single, unified combination of rooms designed for use as a dwelling by one family.

FHLMC means the Federal Home Loan Mortgage Corporation.

FNMA means the Federal National Mortgage Association.

Housing for low- and moderate-income families means:

1. Any owner-occupied dwelling unit, other than a secondary residence, (including a dwelling unit in a condominium, cooperative or planned unit development project), financed by a conventional mortgage, where the income of the mortgagor(s) at the time of origination does not exceed the median income of the area where the dwelling unit is located;

2. Any rental dwelling unit, where the income of the prospective or actual tenant(s) of the unit is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program, if the income of the tenant(s) is low-income or moderate-income, adjusted for family size of the tenant(s) as established in this Notice; or

3. Any rental dwelling unit, where the income of the prospective or actual tenants of a rental dwelling unit is not available, financed by a conventional mortgage, which has a rent affordable to low- and moderate-income families. A rent is affordable to a low-income family if the rent does not exceed 30 percent of the maximum income level for low-income and a rent is affordable to a moderate-income family if its rent does not exceed 30 percent of the maximum income level for moderate-income, with appropriate adjustments for unit size as set forth in this Notice.

Low- or moderate-income census tract means a census tract in which the median family income is less than or equal to 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary. An area means the metropolitan statistical area (MSA) if the property is located in an MSA; otherwise, an area means the county in which the property is located.

Minority means any individual who is included within any one or more of the following racial and/or ethnic categories:

1. American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

2. Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

3. Black—a person having origins in any of the black racial groups of Africa; and

4. Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Minority census tract means a census tract in which minority residents comprise 50 percent or more of the total population in the census tract.

Mortgage means a member of such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage purchase means a transaction in which FNMA buys or otherwise acquires with cash or other thing of value a conventional mortgage for its portfolio or for securitization. Mortgage purchases do not include commitments to buy mortgages at a later date or time. Mortgage purchases, for purposes of the low- and moderate-income housing goal and the central cities housing goal, include credit enhancement transactions where: (1) FNMA provides specific mortgages it owns as collateral to guarantee bonds issued by a state or local housing finance agency to finance housing; and (2) FNMA assumes a credit risk in the transaction by pledging or guaranteeing repayment and such credit risk is substantially equivalent to that assumed by FNMA if it had securitized the mortgages financed by such State or local housing finance agency. Dwelling units financed under this type of credit enhancement transaction shall count toward meeting the low- and moderate-income and central cities goals to the extent dwelling units qualify under this Notice. Other credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless they are reviewed and specifically approved by the Secretary for this purpose. Mortgage purchases include FNMA's activities under HUD's Multifamily Mortgage Credit Demonstration Program but only as determined by the Secretary considering FNMA's risk under any such agreement entered into with the Secretary under the authority of section 542 of the Housing and Community Development Act of 1992 (codified as a note to 12 U.S.C. 1707); the extent of the credit will be determined by the Secretary at a later date based on the specific requirements of the program.

Portfolio of loans means two or more loans.

Rent means:

1. The contract rent for a dwelling unit, but only where such contract rent includes all utilities for the dwelling unit;

2. Where the contract rent for a dwelling unit does not include all utilities, the contract rent for the dwelling unit plus the actual cost of utilities not include in the contract rent; or

3. The contract rent for a dwelling unit plus a utility allowance as set forth in this Notice for the unit.

Rent may be determined under any one of the methods provided in paragraph 1., 2., or 3. The Secretary may authorize FNMA to use a different method of calculating utility costs but, until such authorization is provided, FNMA shall use one of the methods provided in paragraph 1., 2., or 3.

Rural area means any census tract located in an area which is designated as rural by the U.S. Bureau of the Census for the 1990 census.

Seasoned mortgage means a mortgage which has been closed for more than one year before being purchased by FNMA.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at any one time.

Secretary means the Secretary of Housing and Urban Development and any person delegated authority by the Secretary to perform a particular function for the Secretary.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means:

1. The amount to be added to contract rent where utilities are not included in contract rent (also called the "AHS-derived utility allowance") in the following table that corresponds to the type of property (multifamily or single family) and the unit size, based on the number of bedrooms:

Type of property	Number of bedrooms—			
	Efficiency	1	2	3 or more
Multifamily	$45	$51	$69	$91
Single family	$65	$70	$96	$122

2. The utility allowance established under the HUD Section 8 Program, section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for the area where the property is located.

VI. Revision of the Notice

A. Procedure for Revision

The Secretary may change, restructure or otherwise revise any of the annual goals or other requirements necessary to implement the transition provisions in this Notice. The Secretary shall establish any such revisions by Notice in the **Federal Register** after providing FNMA with an opportunity to review and comment not less than 30 days before the issuance of such Notice. The Notice, as changed, shall be effective when published.

B. Factors for Revision

In changing a goal, the Secretary shall consider the same factors considered in establishing the particular goal in this Notice.

VII. Monitoring and Enforcing Compliance

A. Compliance

The Secretary shall monitor and enforce compliance with these interim goals under section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Credit

This Notice sets forth the extent to which FNMA will receive full credit, partial credit, and no credit for mortgage purchases.

C. Refinanced and Seasoned Mortgages

The Secretary will monitor the purchase of refinanced and seasoned mortgages to determine whether such purchases serve the purposes of these interim goals.

VIII. Housing Finance Reports

A. Report on Actions Planned To Meet Interim Goals

On or before November 29, 1993, FNMA shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an initial report describing the actions that FNMA plans to take to meet the interim goals as required by section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Data on Single Family Mortgage Purchases

Within 60 days after the end of each calendar year, FNMA shall submit to the Secretary, in a form determined by the Secretary, data relating to its mortgage purchases on housing consisting of 1–4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The income, census tract location or smaller geographic segment location, gender, and race or national origin of mortgagors.

2. The loan-to-value ratio of mortgages at the time of origination.

3. Whether the mortgage is newly originated or seasoned.

4. The number of units in the housing subject to the mortgage and whether the units are owner-occupied.

5. Other characteristics that the Secretary considers appropriate to the extent practicable, including, but not limited to:

a. Whether the mortgage is for securitization or portfolio;

b. Whether the mortgage is on property from FNMA's real estate owned (REO) portfolio;

c. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

d. For mortgages on owner-occupied properties, whether the mortgagor is a first-time home buyer; and

e. For mortgages on rental properties:

(1) If available to the lender, the income, gender, and race or national origin of tenants; and

(2) If such rental units have been counted toward achievement of the low- and moderate-income or special affordable housing goals—

(a) The income of tenants, if used to determine whether the property counts toward achievement of a goal;

(b) The rent levels of rental units;

(c) The demographics of the area where counted under the special affordable housing goal.

Collection, maintenance and submission of these data in this paragraph B. shall be considered to fulfill the requirements of section 309(m)(1) of the FNMA Charter Act, as amended (12 U.S.C. 1723a). FNMA shall report on the foregoing characteristics of single family mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FNMA need not report data which is not reasonably available from the lender on such mortgages but FNMA shall report the number of such mortgages for which data are not reported.

C. Data on Multifamily Mortgage Purchases

Within 60 days after the end of each calendar year, FNMA shall submit to the Secretary, in a form determined by the Secretary, data relating to mortgage purchases on housing consisting of more than 4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The census tract location or smaller geographic segment location of the housing.

2. The income levels (if available) and characteristics of tenants (as specified by the Secretary) in the housing.

3. Rent levels for units in the housing.

4. Mortgage characteristics (including the number of units financed per mortgage and the amount of loans).

5. Mortgagor characteristics including whether nonprofit, for-profit, or limited equity cooperative.

6. Use of funds, i.e., whether the mortgage is for new construction, rehabilitation, purchase of an existing property, or refinancing.

7. The type of originating institution.

8. Other information that the Secretary considers appropriate to the extent practicable, including but not limited to:

a. Whether the mortgage was newly originated or seasoned at the time of purchase;

b. Whether the mortgage is for securitization or portfolio;

c. Whether the mortgage is on property from FNMA's real estate owned (REO) portfolio; and

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law.

Collection, maintenance and submission of the data in this paragraph C. shall be considered to fulfill the requirements of section 309(m)(2) of the FNMA Charter Act, as amended (12 U.S.C. 1723a). FNMA shall report on the foregoing characteristics of multifamily mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FNMA need not report data which is not reasonably available from the lender on such mortgages but FNMA shall report the number of such mortgages for which data are not reported.

D. Annual Reports on Interim Housing Goals

Within 60 days after the end of each calendar year, FNMA shall submit to the Secretary a report or reports on its performance during the calendar year in achieving the interim goal for mortgage purchases on housing for low- and moderate-income families, the interim goal for mortgage purchases on housing in central cities, and the interim special affordable housing goals set forth in this Notice. This material may be submitted in one combined report or separate reports concerning each of these goals. The report concerning each housing goal shall specify the dollar volume, the number of units, and the number of mortgages on owner-occupied and rental properties purchased by FNMA that do and do not qualify under such goal as set forth in this Notice. The report(s) shall include, at a minimum, the following:

1. The number of units and dollar volume of mortgage purchases by number of units in property.

2. Whether the mortgages are for newly constructed properties, rehabilitated properties, purchases of existing properties, or refinancing.

3. Whether the mortgages are newly originated or seasoned.

4. Whether the mortgages are on property from FNMA's real estate owned (REO) portfolio;

5. In the report concerning the low- and moderate-income housing goal:

a. Whether the units are owner-occupied or rental;

b. Whether the units are for low-income, moderate-income or other; and

c. Where the units are rental, whether the determination as to whether the units are for low-income, moderate-income or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the number of units shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the number of units shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income).

6. In the report concerning the Special Affordable Housing goal:

a. Whether the units financed are housing of low-, very low- or especially low-income, or other families;

b. Where the units are rental, whether the determination as to whether the units are for especially low-, very low-, low-income, or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income);

c. Whether (if single family and low-income) the median income of the census tract does or does not exceed 80 percent of area median income;

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

e. For seasoned mortgages, whether the seller(s) of seasoned portfolios of loans are engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, and whether the seller(s) are viable, on-going enterprises that will for the foreseeable future be originating loans that meet the goal, including FNMA's basis for concluding that the seller(s) are such enterprises and are engaged in such a specific program; and

f. Although not required, FNMA may report on commitments to purchase mortgages.

7. In the report concerning the central cities housing goal, whether the property is located in a central city, rural area, low- or moderate-income census tract, minority census tract, concentrated minority census tract, or other geographical area as required by the Secretary.

8. Such other detail as is requested in writing by the Secretary.

E. Quarterly Reports on Interim Housing Goals

Within 60 days following the end of each of the first three calendar quarters of each year, FNMA shall submit to the Secretary a report which shall provide the same information described in paragraph D. for mortgages purchased by FNMA in the previous quarter. The first quarterly report under this Notice shall include data concerning the first quarter of calendar year 1994.

F. Annual Reports on Actions Taken

Within 60 days following the end of each calendar year, in order to assist the Secretary in preparing the Annual Report to the Congress, FNMA shall provide:

1. A description of actions that FNMA has undertaken during the preceding year or is planning to undertake to promote and expand its purchases of mortgages on housing for low- and moderate-income families.

2. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand its purchases of mortgages on properties located in central cities.

3. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand its purchases of mortgages on housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

4. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand its attainment of its statutory purposes as set forth in the FNMA Charter Act, section 301.

5. A description of any FNMA efforts to standardize credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products.

6. A description of actions that FNMA has undertaken or is planning to undertake to promote and expand opportunities for first-time home buyers.

7. Any actions taken under section 1325(5)[98] with respect to originators found to violate fair lending procedures; and

8. Such other information that the Secretary considers necessary for the report and requests in writing.

G. Additional Analyses

The Secretary may request that the data underlying the reports required under paragraphs A. through F. be provided to the Secretary or that FNMA conduct additional analysis and submit additional reports as the Secretary determines necessary to facilitate the Secretary's establishment, monitoring, and enforcement of these goals.

Authority: Sections 1331–37 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4561–67, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

Dated: October 7, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25181 Filed 10–12–93; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3630; FR–3523–N–01]

Federal Home Loan Mortgage Corporation; Interim Housing Goals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of interim housing goals.

SUMMARY: This Notice sets forth three separate interim goals, for calendar years 1993 and 1994, established by the Secretary of Housing and Urban Development for the Federal Home Loan Mortgage Corporation's purchase of mortgages on (1) housing for low- and moderate-income families, (2) housing located in central cities, and (3) housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families. This Notice describes the background, operation and statutorily prescribed factors considered in the establishment of the goals—along with the goals themselves—as well as the general and specific requirements for measuring performance under the goals, relevant definitions and reporting requirements.

DATES: Effective date: October 13, 1993.

Comments due date: The Secretary will accept comments from the public on an open docket while it is developing the regulation containing the annual goals and future implementation requirements for 1995 and thereafter.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Ben E. Laden, Director, Financial Institutions Regulation Staff, telephone (202) 708–1464 or Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons is available at (202) 708–0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Housing and Urban Development ("the Secretary") is required to establish certain annual goals for mortgage purchases by the Federal National Mortgage Association ("FNMA" or "enterprise") and the Federal Home Loan Mortgage Corporation ("FHLMC" or "enterprise") on housing, under part 2, subpart B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 ("the Act"), enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) and codified at 12 U.S.C. 4561–67. Specifically, the Act requires that the Secretary, after consideration of certain prescribed factors for each of the goals, establish annual goals for purchases of mortgages on housing for low- and moderate-income families, housing located in central cities, and special affordable housing, *i.e.*, housing meeting the needs of and affordable to low-income families in low-income areas and very low-income families.

For the transition period of calendar years 1993 and 1994, the Act establishes target percentage amounts for purchases by FNMA and FHLMC of mortgages on housing for low- and moderate-income families and housing located in central cities and specific dollar amounts for purchases of mortgages on special affordable housing. The Act requires the Secretary to establish interim goals covering the transition period for FNMA and FHLMC in relation to the targets. The Act provides that where an enterprise is not meeting the target(s) for the purchase of mortgages on housing for low- and moderate-income families and/or housing located in central cities as of January 1, 1993, the Secretary shall establish the goal(s) so that the enterprise improves its performance relative to the target(s) and, "to the maximum extent feasible," meets the target(s) by December 31, 1994, the end of the transition period. (Sections 1332(d)(2)(A) and 1334(d)(2)(A).[1]) Where an enterprise is meeting the target(s) as of January 1, 1993, the Act requires that the Secretary establish the goals for the period so that the enterprise improves its performance relative to the target(s). (Sections 1332(d)(2)(B) and 1334(d)(2)(B).) The Act contains no similar requirement for the establishment of the special affordable housing goals.

The Act provides that the Secretary must establish any requirements necessary to implement the transition provisions of the Act, including housing goals, by notice after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. (Sections 1332(d)(3), 1333(d)(4), and 1334(d)(4).) The Secretary provided FHLMC with an opportunity to review and comment on this Notice on July 22, 1993. The requirements in this Notice were revised following review of the comments. If any requirements for the interim goals contained in this Notice require revision, the Secretary may revise the goals by Notice in the Federal Register after providing the enterprises with an opportunity to review and comment not less than 30 days prior to publication.

The Act requires the Secretary to move expeditiously to establish these interim goals. Because this legislative scheme is new, many of the assumptions and interpretations embodied in this Notice are likely to be reconsidered, depending on the performance of FHLMC under these goals and other relevant matters. Future goals and requirements are likely to vary substantially from those contained in this Notice. Accordingly, these interim goals and the provisions of this Notice

[98] Codified at 12 U.S.C. 4545(5).

[1] Unless otherwise specified, all section cites herein are cites to the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Sections 1331–38 of that Act are codified at 12 U.S.C. 4561–67.

apply only to activities of FHLMC under the goals during the transition period.

The Secretary shall issue final regulations necessary to implement Part 2 of the Act, including the housing goals for 1995 and thereafter and excluding the interim housing goals, within 18 months of enactment of the Act. (Section 1349.[2]) The Act, at section 1331(c), authorizes the Secretary to adjust any goal established by the Secretary from year to year by regulation, except as otherwise provided under the Act.

All three sets of interim goals for FHLMC are combined in this Notice due to similarities in the goals and the requirements for their implementation. Where the goals or the requirements differ, this Notice discusses such matters separately. In a similar but separate Notice, the Secretary has established the interim goals for FNMA.

The Goals

After consideration of the applicable factors provided in the Act, *see below*, the Secretary establishes the interim goals as follows:

Housing for Low- and Moderate-income Families

The target set forth in the Act for FHLMC's purchases of conventional mortgages financing housing for low- and moderate-income families for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FHLMC's mortgage purchases for each year. (Section 1332(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 28 percent; the annual goal for 1994 is established at 30 percent.

Housing Located in Central Cities

The target set forth in the Act for FHLMC's purchases of conventional mortgages financing housing located in central cities for 1993 and 1994 is 30 percent of the total number of dwelling units financed by FHLMC's mortgage purchases for each year. (Section 1334(d)(1).) The Secretary establishes the annual goal in this Notice for 1993 for such purchases at 26 percent; the annual goal for 1994 is established at 30 percent.

Special Affordable Housing

The special affordable housing goal set forth in the Act at section 1333(d)(2), and established by the Secretary under this Notice for the two year period 1993–94 for FHLMC's purchases of conventional mortgages on rental and owner-occupied housing meeting the then existing unaddressed needs of, and affordable to, low-income families in low-income areas and very-low income families shall include mortgage purchases of not less than one and one-half billion dollars ($1,500,000,000) "above and beyond [FHLMC's] existing performance and commitments."[3]

In establishing these goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary has determined, under the factors provided in the Act, to set the goals at levels which will require FHLMC to stretch its efforts to purchase mortgages and provide financing meeting the goals during the transition period of 1993 and 1994.[4]

Goals for Housing for Low- and Moderate-Income Families

Section 1332(b) of the Act requires the Secretary to consider national housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the sound financial condition of the enterprises, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing for low- and moderate-income families. Performance under the goals for the purchase of mortgages on housing for low- and moderate-income families is to be evaluated by the Secretary based on the number of dwelling units financed by such mortgages as a percentage of the total number of units financed by mortgages purchased by FHLMC. (Section 1332(d)(1).)

To determine whether owner-occupied dwelling units are affordable to low- or moderate-income families and count toward achievement of these goals, the Act provides, at section 1332(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families (sections 1332(c)(1)(B)(i) and 1303 (8)(B) and (10)(B)[5]) shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- or moderate-income families. (Section 1332(c)(1)(B)(ii).) Under the Act, a rent level is affordable to low- or moderate-income families if such rent, as adjusted for unit size as measured by the number of bedrooms, does not exceed 30 percent of the maximum income level for the particular low- or moderate-income classification. (Section 1332(c)(2).)

Section 1332(a) of the Act provides that the Secretary may establish separate subgoals within the goals for housing for low- and moderate-income families. Thus, the Secretary could, for example, establish a separate subgoal for housing for low-income families. Pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of subgoals under this section. This Notice does require FHLMC to report separately on dwelling units for low-income families and for moderate-income families.

Central Cities Housing Goals

Section 1334(b) of the Act, in part, requires the Secretary to consider urban housing needs, economic, housing, and demographic conditions, the performance and effort of the enterprises in achieving the goals in previous years, the size of the relevant conventional mortgage market, the ability of the enterprises to lead the industry, and the need to maintain the enterprises' sound financial condition, in establishing the annual goals for the purchase by FNMA and FHLMC of mortgages on housing located in central cities. Performance under the goals for housing located in central cities is to be evaluated by the Secretary based on the number of dwelling units located in central cities that are financed by mortgages purchased by FHLMC, as a percentage of the total number of units financed by mortgages purchased by FHLMC. (Section 1334(d)(1).) Section 1334(d)(3) of the Act defines "central city" as "any political subdivision designated as a central city by the Office of Management and Budget."

Section 1334(a) of the Act also requires the Secretary to establish goals for FHLMC's purchase of mortgages on housing located in rural and other underserved areas. The Act does not require that the Secretary establish these

[2] Codified at 12 U.S.C. 4589.

[3] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[4] *See id.* at 35 (1992) ("the Committee fully expects [FNMA and FHLMC] will need to stretch their efforts to achieve [the low- and moderate-income goal]") and *id.* at 36 ("The purposes of the special affordable housing goal are two-fold: (1) to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments; and (2) to encourage [FNMA and FHLMC] to make such purchases an integral part of their business through the development of new product lines, the creation of new business relationships, the building of institutional capacity and other innovative activities.")

[5] Section 1303 is codified at 12 U.S.C. 4502.

goals for the transition period and neither HUD nor the enterprises have experience with such goals. Accordingly, pending consideration of the needs and policy issues involved, the Secretary has determined to defer establishment of other goals under this section while issuing interim central cities goals under section 1334(d)(2).

Special Affordable Housing Goal

Section 1333(a)(1) of the Act provides that the Secretary "shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families." In establishing the goal, the Secretary is required to consider data submitted in connection with the goal for previous years, the performance and effort of the enterprise in achieving the goal in previous years, national housing needs, the ability of the enterprise to lead the industry, and the need to maintain the enterprise's sound financial condition. (Section 1333(a)(2).)

Under the special affordable housing goal, the Secretary will evaluate FHLMC's performance based on the dollar amount of mortgage purchases that meet the requirements of the Act and this Notice. Performance is not measured—as under the other housing goals established under the Act—in terms of the percentage of dwelling units financed.

The Act requires that the Secretary establish the special affordable housing goals at no less than "1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year." (Section 1333(a)(1).) During the two-year transition period beginning on January 1, 1993, the special affordable housing goal for FHLMC must "include mortgage purchases of not less than $1,500,000,000 (for such 2-year period), with one-half of such purchases [$750,000,000] consisting of mortgages on single family housing and one-half [$750,000,000] consisting of mortgages on multifamily housing." (Section 1333(d)(2).) Under this Notice, the Secretary is requiring FHLMC to purchase mortgages totalling at least these minimum dollar amounts during the transition period of 1993–1994, above and beyond FHLMC's existing performance and commitments.[6] The special affordable housing goal for FHLMC for 1993 and 1994, therefore, requires $1,500,000,000 in mortgage purchases in addition to the amount of existing business which would have qualified under the goals; for purposes of these goals existing business shall be based on performance in 1992, the year before the housing goals became effective. The statute requires achievement of this goal by December 31, 1994. (Section 1333(d)(2).) To meet these special affordable housing needs, FHLMC should move expeditiously to meet the goal and should, in any event, purchase a significant amount of mortgages qualifying under this goal in 1993.

The Act and this Notice require that the goals for mortgage purchases financing multifamily housing and the goals for mortgage purchases financing single family housing under this goal be subdivided further into subgoals to reach particular categories of housing for families at lower income levels. Thus, the Act requires that, for multifamily mortgage purchases by FHLMC to be counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of such purchases must comprise mortgages on multifamily housing where dwelling units are affordable to low-income families (families whose incomes do not exceed 80 percent of area median income). (Section 1333(d)(3)(A)(i).) The remaining 55 percent of the dollar volume of multifamily mortgages purchased must comprise mortgages on multifamily housing in which either: (1) "at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent" of area median income (section 1333(d)(3)(A)(ii)(I)); or (2) "at least 40 percent of the units are affordable to very low-income families" (families whose incomes do not exceed 60 percent of area median income) (section 1333(d)(3)(A)(ii)(II)). The Act provides that only those portions of mortgages on multifamily properties that are attributable to units affordable to low-income families shall contribute to the achievement of this goal. (Section 1333(d)(3)(C).)

The Act requires that, for mortgage purchases financing single family housing purchased by FHLMC counted toward achievement of the special affordable housing goal, 45 percent of the dollar volume of single family mortgages comprise mortgages of low-income families (families whose incomes do not exceed 80 percent of area median income) "who live in census tracts in which the median income does not exceed 80 percent of the area median income." (Section 1333(d)(3)(B)(i).) The remaining 55 percent of the dollar volume of single family mortgage purchases must comprise mortgages of very low-income families (families whose incomes do not exceed 60 percent of area median income). (Section 1333(d)(3)(B)(ii).)

The Act sets forth certain specific requirements for evaluating FHLMC's performance in meeting the special affordable housing goal. To determine whether owner-occupied dwelling units are affordable to very low- or low-income families and qualify toward achievement of this goal, the Act provides, at section 1333(c)(1)(A), that the income of the mortgagor(s) at the time of loan origination must be used. For rental dwellings, the income of prospective or actual tenants, adjusted for smaller and larger families, shall be used, if available, and where such income information is not available, rent levels must be used to determine whether the dwelling units are affordable to low- and very low-income families (section 1333(c)(1)(B)) with adjustments for unit size as measured by the number of bedrooms (section 1333(c)(1)(B)(ii) and (c)(2)). Under the Act, a rent level is affordable to a family if it does not exceed 30 percent of the maximum income level for the particular income category. (Section 1333(c)(2).)

In evaluating FHLMC's performance in achieving this goal, the Act requires the Secretary to give full credit toward achievement of the special affordable housing goal for: (1) The purchase or securitization of federally related mortgages that cannot be readily securitized through the Government National Mortgage Association (GNMA) or another Federal agency, where FHLMC's participation substantially enhances the affordability of the housing subject to such mortgages,[7] and the mortgages are on housing that otherwise qualifies under this goal; (2) the purchase or refinancing of seasoned loan portfolios where the seller has a specific program to use the proceeds of such sales to originate new loans that meet the special affordable housing goal

[6] One purpose of the special affordable housing goal is "to increase [FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitment." S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[7] Mortgages that cannot be readily securitized through GNMA or another Federal agency and mortgages where FHLMC's participation substantially enhances the affordability of the housing subject to the mortgages include, for purposes of these interim goals, mortgages under the Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, sec. 255 of the National Housing Act, 12 U.S.C. 1715z–20, and under the Guaranteed Rural Housing Loan program, 7 U.S.C. 1933.

and such purchases or refinancings support additional lending for housing that otherwise qualifies under this goal; and (3) the purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where the loans are not guaranteed by the RTC or the FDIC or other Federal agencies, the loans include recourse provisions similar to those offered through private mortgage insurance or other conventional sellers, and such loans are for the purchase of housing that otherwise qualifies under this goal. (Section 1333(b)(1).)

This Notice clarifies that entities qualify as sellers, under (2) above, where the sellers currently operate or actively participate in an ongoing program that results in the origination of loans meeting the special affordable housing goal; thus, FHLMC's purchase of such loans supports additional lending for housing that will qualify under this goal. By encompassing active participation, the Notice allows purchases of portfolios from sellers, that actively participate with qualified housing groups that operate programs resulting in the origination of loans meeting this goal, to count toward achievement of the goal. However, if FHLMC wants to count portfolio purchases toward achievement of this goal, it must verify and monitor that the sellers currently operate or actively participate in such ongoing programs that result in the origination of additional loans meeting the requirements of this goal. FHLMC must also develop necessary mechanisms to ensure compliance with the requirement that sellers actively participate in program(s) which will use the proceeds of the purchase to support additional lending to meet the affordable housing goal.

This Notice provides that the dollar amount of each mortgage that will contribute to achievement of a goal will be the unpaid principal balance of the mortgage, or portion thereof. While section 1336(a)(3)(A) of the Act provides that the Secretary shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which it qualifies, this Notice clarifies that a single mortgage purchase will not be counted as contributing toward the achievement of more than one subgoal under the special affordable housing goal.[8] Additionally, mortgage purchases in excess of the one and one-half billion dollar special affordable housing goal, which qualify for any of the subgoals under the special affordable housing goal, may be made without regard to the percentage requirements applicable to the subgoals.

As provided in section 1333(b)(2) of the Act, this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FHLMC's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FNMA's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FHLMC may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FNMA.

Absence From the Multifamily Housing Market

FHLMC reported significant losses in its multifamily housing program and suspended new mortgage purchases in 1990. Soon thereafter, FHLMC stated its intention to reenter the market when new program staff were added and management changes were implemented. Since then, FHLMC has moved slowly and has repeatedly missed announced target dates for reentering the market.[9] FHLMC recently told HUD that it had embarked on a three phase reentry program, beginning with refinancing of troubled loans in its own portfolio, and that it will achieve full reentry, including purchasing of new loans, by the end of 1993.

Under the FHLMC Act, at section 301(b)(3), FHLMC is obligated "to provide ongoing assistance to the secondary market for residential mortgages (including activities relating to mortgages on housing for low- and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities) by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for residential mortgage financing." Multifamily rental properties comprise a sizeable proportion of housing for low- and moderate-income families. By not actively purchasing multifamily mortgages, FHLMC is not serving a significant portion of the housing market for low- and moderate-income families.

The 1993 goals established in this Notice take into account FHLMC's absence from the multifamily market. However, in establishing the 1994 low- and moderate-income housing goal and the central cities goal both at 30 percent, the Secretary has assumed full reentry by FHLMC and, in fact, the 30 percent goals are designed to ensure that FHLMC fully reenters the multifamily market by the start of 1994; if FHLMC fails to fully reenter by the start of 1994, FHLMC may not be able to meet the goals.

Definitions and General Requirements

This Notice details the definitions employed in establishing and measuring compliance with the goals, the Secretary's consideration of the factors under the Act for establishing each of these goals, the goals themselves, and requirements for implementation, monitoring, and reporting purchases under the goals.

Definitions

The Act provides certain definitions which are relevant to these goals including "central city," "enterprise," "low-income," "median income," "moderate-income," "mortgage purchase," "multifamily housing," "single family housing," and "very low-income." (Sections 1303 and 1334(d)(3).) In addition to the definitions provided in the Act, this Notice provides definitions for relevant terms such as "seasoned mortgage" and further clarifies certain terms including "mortgage purchase."

The Act provides that the Secretary shall establish goals for "mortgage purchases." (Sections 1332(a), 1333(a)(1) and 1334(a).) The determination of the types of transactions of FHLMC that qualify as "mortgage purchases" directly bears on the appropriate level of the interim goals established. The Act defines the term "mortgage purchases" as including "mortgages purchased for portfolio or securitization." (Section 1303(11).) This Notice provides that the term "mortgage purchases" encompasses transactions where FHLMC buys or otherwise acquires mortgages with cash or other thing of value, including swap transactions. While the Secretary commends FHLMC's involvement in a wide variety of undertakings including equity investments in projects eligible for Low-Income Housing Tax Credits (LIHTC), 26 U.S.C. 42, and purchases of State and local government housing bonds, which serve significant purposes related to low- and moderate income housing, the Secretary has concluded that these activities generally do not

[8] See S. Rep. No. 102-282, 102d Cong., 2d Sess. 65 (1992).

[9] *See, e.g., National Mortgage News*, "Fannie Mae Concerned on Multifamily," April 15, 1991 at 23 and "Freddie MF Restart May Be in Mid-'92," Oct. 21, 1991 at 1.

involve "mortgage purchases" by FHLMC. Although the Secretary appreciates and encourages FHLMC's continued involvement in these programs, such activities shall count toward achievement of these goals only to the extent that they involve mortgage purchases by FHLMC which qualify under the Act and this Notice. The Secretary notes that this approach is consistent with the language in the Senate report concerning such activities:

> In the recent past, [FNMA and FHLMC] have invested heavily in low-income housing tax credits. Those investments—which make [FNMA and FHLMC] equity partners in housing developments and preservation efforts sponsored by community-based organizations, national non-profit intermediaries, local corporations, and others—have made important contributions to many communities. The Committee applauds these programs. However, goals required in [the special affordable housing] section relate only to mortgage purchases, and therefore, do not include investments in tax credits or mortgage revenue bonds issued by state or local authorities. [FNMA and FHLMC] are expected to continue such investments, but to carry them out in addition to initiatives necessary to meet the goals contained in this legislation. Following the transition period, such activities could be encompassed on a full or partial credit basis, in the goals [for housing for low- and moderate-income families and for housing located in central cities] * * *.[10]

Where FHLMC purchases mortgages on properties sold from FHLMC's real estate owned (REO) portfolio acquired through foreclosures, such purchases will count under these goals. Even where FHLMC itself provides the financing and takes a mortgage directly from the buyer and no other lender is involved, FHLMC acquires a mortgage for its portfolio or securitization and the Secretary has determined to count such a transaction as a "mortgage purchase."

This Notice also clarifies that the term "mortgage purchases" includes all purchases of conventional mortgage loans including, with some limitations, mortgages resulting from refinancings and the purchase of seasoned mortgages. Except as specifically provided under the special affordable housing goal, purchases of refinanced mortgages by FHLMC shall receive full credit toward achievement of the goals, but only to the extent such purchases meet the requirements of the Act and this Notice. FHLMC shall provide detailed data on refinancings; the Secretary will evaluate the data to determine the extent to which refinancings serve the purposes of these goals and whether refinancings should receive full, partial or no credit toward the achievement of the goals after the transition period.

This Notice also provides that for single family dwellings, a seasoned mortgage will count toward achievement of a goal based on the income of the mortgagor(s) and, for rental units, the tenants' income or the rent level at the time of origination as compared to area median income at the time of origination; appropriate median income data will be used by FHLMC.

In defining "mortgage purchases," this Notice excludes non-conventional mortgages, such as mortgages insured under HUD's One- to Four-Family Home Mortgage Insurance Program (section 203(b) and (i) of the National Housing Act, 12 U.S.C. 1709(b) and (i)), and mortgages guaranteed by the Department of Veterans Affairs. "Mortgage purchases" may include FHLMC's activities under the Multifamily Mortgage Credit Demonstration (section 542 of the Housing and Community Development Act of 1992, codified as a note to 12 U.S.C. 1707). Under the program, the Secretary may enter into risk-sharing agreements with FNMA and/or FHLMC to finance multifamily housing under which the Secretary and the respective enterprise would assume portions of the risk. To the extent the units financed would qualify toward achievement of any of the housing goals, FHLMC may receive partial credit for section 542 activities considering the percentage of the risk that FHLMC assumes. The extent of the credit will be determined at a later date based on the specific requirements of the program.

Requirements

As explained above, in counting FHLMC's performance in achieving these goals, the Secretary will, for mortgage purchases on single family dwellings, consider the mortgagors' income and/or the rent levels or tenants' income at the time of origination; for mortgage purchases on multifamily properties, the Secretary will consider, based on data at the time of mortgage purchase, the income of prospective or actual tenants if available and, where such income information is not available, the rent on dwelling units in comparison to the rent levels affordable to especially low-, very low-, low-, and moderate-income families. (Sections 1332(c) and 1333(c).) A rent level shall be considered affordable to such families if it does not exceed 30 percent of the maximum income level of the family's classification, *i.e.*, especially low-, very low-, low-, or moderate-income, with adjustments for unit size. (Sections 1332(c)(2) and 1333(c)(2).)

Because sections 1332(c)(1)(B) and 1333(c)(1)(B) of the Act require the use of tenants' income where such data is available, the Secretary is requiring that tenants' income be collected by FHLMC where such income information is available. Based on the legislative history, income information is available "when it is known by the lender because, for example, such information is required as a condition of an existing federal housing program."[11]

Where tenant income is not known to the lender, the 30 percent rent proxy is to be used to monitor and evaluate FHLMC's performance in achieving the goals as provided in sections 1332(c) and 1333(c) of the Act. (However, the Secretary notes that the 30 percent rent standard prescribed by the Act for determining affordability under the low- and moderate-income housing goal is too inclusive. In applying this standard, it can be anticipated that more than 90 percent of rental housing will be regarded as affordable to low- and moderate-income families.)

The term "rent" is not defined in the Act. Where the term "rent" is used in eligibility and affordability requirements for government housing programs, the term means "gross rent," which includes all utilities, based on either actual data or allowances. Likewise, this Notice defines "rent" as gross rent, *i.e.*, contract rent including utilities or contract rent plus utilities where some or all of the utilities are not included in the contract rent.

Where all utilities are not included in rent, use of contract rent is unsatisfactory and excludes a significant component from housing costs. Utility costs comprise a significantly larger share of total housing costs for lower income families in comparison with higher income families. Moreover, applying the rent test, with rent exclusive of utility costs, would result in an even more unrealistically inclusive test of affordability for rental dwelling units than is the case using gross rent. If contract rent were used, HUD projects that more than 95 percent of all rental units would be classified as affordable to low- and moderate-income families.[12]

To resolve the problem of assuring consideration of gross rents including utility costs, while at the same time

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[10] S. Rep. No. 102–282, 102d Cong., 2d Sess. 38 (1992). See also H.R. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991).

[11] S. Rep. No. 102–282, 102d Cong., 2d Sess. 35 (1992).

[12] Using rent as defined inthis Notice, consistent with current law, 93 percent of existing rental dwelling units and 78 percent of recently constructed rental dwelling units qualify as affordable to low- and moderate-income families.

providing workable means for including those costs, this Notice allows FHLMC to use: actual data on utilities; utility allowances, provided in this Notice, based on data from the American Housing Survey (AHS); utility allowances established for the HUD Section 8 Program (section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f); and/or an alternative adjustment formula subject to approval by the Secretary. The Notice provides that unless such an alternative approach is approved by the Secretary, FHLMC shall use actual data, the AHS-derived allowances, or the Section 8 allowances.

Where tenant income is not available, sections 1332(c)(2) and 1333(c)(2) of the Act require that the test for affordability of rental dwelling units be applied to units "with appropriate adjustments for unit size as measured by the number of bedrooms." Thus, to determine whether a unit counts toward achievement of a goal, rent on the unit is considered in terms of the number of persons housed in the unit. The Low-Income Housing Tax Credit (LIHTC) provides an accepted formula for adjustments to determine housing capacity, see 26 U.S.C. 42(g)(2)(C), and this Notice requires the use of those adjustments for these goals. These adjustments assume that an efficiency houses one person, a one-bedroom unit houses 1.5 persons and each additional bedroom houses an additional 1.5 persons.

Income adjustments for family size, required under the Act to determine whether a renter family's income qualifies as especially low, very low, low, or moderate, are established for the HUD Section 8 program and use of these adjustments is also required under this Notice. To determine which rental dwelling units qualify as affordable, this Notice combines the LIHTC unit size adjustment factors with the Section 8 family size adjustment factors to develop the necessary unit size adjustment factors to be applied to rent. For example, under the LIHTC an efficiency is assumed to house one person; under Section 8, for moderate income, one person's rent may not exceed 70 percent of 30 percent of area median income; thus, an efficiency is affordable for a moderate-income person if the rent does not exceed 21 percent of area median income.[13] Similarly, a two-bedroom unit is assumed to house three persons; three persons' rent may not exceed 90 percent of 30 percent of area median income; thus, a two-bedroom unit is affordable for a moderate-income family if the rent does not exceed 27 percent of area median income. These percentages are included below under "General Requirements."

In some instances, the LIHTC unit size adjustments and the Section 8 family size adjustments do not directly correspond to each other. For example, under the LIHTC a one-bedroom apartment is assumed to house 1.5 persons but Section 8 does not provide a family size adjustment for 1.5 persons. Therefore, the HUD Section 8 adjustment factors for one person (70 percent) and two persons (80 percent) have been averaged to obtain a rent not in excess of 75 percent of 30 percent of area median income, yielding a net unit size adjustment factor of 22.5 percent of area median income.[14] Similar interpolations also are made for three-bedroom and five-bedroom units.

In establishing the goals for housing for low- and moderate-income families, housing located in central cities, and special affordable housing, the Secretary, under section 1331(b), may consider the number of housing units financed by any multifamily housing mortgage purchase. The Secretary has decided to count all such dwelling units, whether in multifamily or single family housing, under these goals if the units otherwise meet the requirements of the Act and this Notice.

The statute does not allow a unit or mortgage that satisfies another State or Federal low- or moderate-income housing requirement to be automatically counted under this Act without independently meeting the Act's requirements.

In accordance with section 1335 of the Act, this Notice requires that in order to meet these goals, FHLMC shall: Design programs and products that facilitate the use of government assistance; develop relationships with organizations that develop and finance housing and with State and local governments including housing finance agencies; take affirmative steps to assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, assist insured depository institutions to meet Community Reinvestment Act obligations, including developing appropriate and prudent underwriting standards; and develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers.

Section 1336(a) of the Act requires the Secretary to monitor and enforce the goals. As required by section 1336(a)(3)(A), this Notice provides that a mortgage purchase (or a dwelling unit financed by such purchase) by FHLMC will count toward achievement of each such goal for which it qualifies only as established in the Act and this Notice.

Reporting

A key purpose of the transition period is to gain data on the enterprises' performance.[15] Under this Notice, the Secretary requires quarterly and annual reports from FHLMC and such other reports as the Secretary considers appropriate to carry out the Secretary's responsibilities. The Act, at section 1337, and this Notice require FHLMC to submit to the Secretary, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives within 45 days of the establishment of the goals a report for each interim housing goal

[13] Similarly, for purposes of determining affordability to low-income families: an efficiency is assumed to house one person; one person's rent may not exceed 70 percent of 30 percent of 80 percent of area median income (using family size to adjust income); thus, an efficiency is affordable to a low-income family if the rent does not exceed 16.8 percent of the area median income.

[14] Similarly, for purposes of low-income affordability, the same 75 percent figure is used to obtain a rent not in excess of 75 percent of 30 percent of 80 percent of area median income, yielding a net unit size adjustment factor of 18 percent.

[15] The legislative history provides:

One reason for adopting the low-income housing provisions set forth in the Committee bill is the Committee's frustration with the lack of concrete information on [FNMA's] and [FHLMC's] current activity in the area of housing for low-income persons. . . . Further, because [FNMA] and [FHLMC] do not collect data on the income of borrowers or tenants, it is impossible to tell what income levels are being served by the enterprises' current activities.

H. Rep. No. 102–206, 102d Cong., 1st Sess. 60 (1991). "[A]n information vacuum has severely impeded Congressional efforts to measure [FNMA's] compliance with regulatory housing goals that have been in force since 1978. The Committee believes that enactment of this bill will fill this vacuum on an expeditious basis . . . ." S. Rep. No. 102–282, 102d Cong., 2d Sess. 39 (1992); see *id.* at 33 ("there was no complete and accurate data to measure the [enterprises'] performance in serving low- and moderate-income families. The Committee's initial investigation yielded a disturbing lack of empirical information on the [enterprises'] business"). The Senate report noted that collection of data is "central to understanding and evaluating the [enterprises'] single-family and multifamily businesses." *Id.* at 39. The Senate report further noted that data collection "will help evaluate the extent to which [FNMA] and [FHLMC] are meeting the needs" of those persons intended to benefit from the housing goals. *Id.* The collected data "will show, for the first time, the nature and scope of the enterprises' multifamily business," *id.* at 40, and "will ensure, for the first time, that the regulator and Congress have all the information necessary to assess the performance of the [enterprises]," *id.* at 34. After the transition period, the Secretary will have "latitude to adjust the goals to take into account newly available data." *Id.* at 36. Specifically concerning the special affordable housing goal, the Senate report states: "After the experience of the first two years, the [regulator] may redesign the categories to target more effectively low-income family needs and reflect any gaps in [enterprise] performance." *Id.* at 37.

describing the actions FHLMC plans to take to meet the goal. This Notice requires this initial report as well as annual, quarterly, and periodic reports as required by the Secretary. The requirements for these reports contained in this Notice may be satisfied either through separate reports on the goals covering housing for low- and moderate-income families, housing located in central cities, and special affordable housing, or through consolidated reports on all three goals.

Response to Comments From FNMA and FHLMC

On July 22, 1993, the Secretary provided each enterprise an opportunity to review and comment on that enterprise's proposed Notice of Interim Housing Goals. Both enterprises provided comments.[16] HUD staff also met with FNMA and FHLMC officers and employees to discuss the comments; after the meetings, additional comments were provided.[17] (Copies of these comments are available for public inspection in room 8234, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.) The following is a discussion of these comments.

Differences Between Enterprises in 1993 Low- and Moderate-Income and Central City Goals

FNMA commented that the Notice for FHLMC should not establish lower interim low- and moderate-income and central city housing goals for FHLMC than for FNMA in 1993 and requested that HUD eliminate the disparity as soon as possible. In establishing the goals for each enterprise, the Secretary considered the factors required by the statute, including FNMA's and FHLMC's performance and effort in previous years. *See* sections 1332(b)(3) and 1334(b)(3). Considering FHLMC's performance in previous years, including its absence from multifamily financing, the Secretary determined that FHLMC's goals for 1993 and 1994 should be set at the figures originally established. However, it should be noted that the low- and moderate-income and central city goals for FHLMC are the same as those for FNMA for 1994. Accordingly, the Notices have not been changed in this regard.

Special Affordable Housing

FHLMC objected to the Notice's requirement that its purchases of mortgages counting toward achievement of the special affordable housing goal in 1993 and 1994 be "above and beyond" its 1992 performance ("1992 base" or "base"). FHLMC contended that such a requirement is inconsistent with Congressional intent. The Senate report states that one purpose of the goal is "to increase [FHLMC's] purchase of mortgages serving low-income families above and beyond [its] existing performance and commitments."[18] This language is consistent with section 1333(d)(2) which establishes a special affordable housing goal for FHLMC of "not less than" $1.5 billion.

According to estimates derived from Home Mortgage Disclosure Act (HMDA) data, in 1991 alone FHLMC purchased more than $800 million and FNMA purchased more than $1 billion of single family mortgages that would have met the requirements of this goal. Due to the significant increase in the enterprises' business in 1992, their 1992 special affordable purchases presumably exceeded the levels attained in 1991.[19] The legislative history of the Act provides that the goal should "increase the [enterprises'] purchase of mortgages."[20] Given the estimates of the level of the enterprises' 1991 purchases, it is clear that requiring performance "above and beyond," consistent with the legislative intent, is required to increase the enterprises' purchases. Otherwise, the overall goals for 1993 and 1994, averaging $750 million for FHLMC and $1 billion for FNMA each year, including both single family and multifamily purchases, would require less than the dollar amount of single family special affordable purchases that FHLMC and FNMA made in 1991 alone.

Under the special affordable housing goal, 1992 performance provides the base beyond which the enterprises must perform. FNMA noted that its performance relevant to special affordable housing in previous years has increased its 1992 base for the special affordable housing goal and stated that FHLMC's base will be significantly lower than FNMA's. Accordingly, FNMA requested that this "competitive inequality" be eliminated as soon as possible.[21] Although FNMA's purchases of special affordable mortgages have exceeded FHLMC's, the Notice retains the "above and beyond" requirement for the transition period, because it is consistent with the Act and its legislative history. After that, this matter will be considered in implementing the Secretary's authority to establish special affordable housing goals beyond the transition period under section 1333(a)(1).

FNMA and FHLMC stated that the 1992 base may be a distorted benchmark for the special affordable housing goal due to the record volume of business in 1992. FNMA commented that HUD should recognize the effects of large shifts in volume and recommended adjusting the 1992 base to reflect the change in the average level of FNMA's business in 1993 and 1994. Although fluctuations in business volume are likely, 1993–94 should also be a strong period for mortgage finance due to: an extended decline in interest rates following a long period of high interest rates; the high level of FNMA and FHLMC business to date in 1993;[22] and the fact that the country is in the early stages of an economic recovery, which generally corresponds to a period of increased home purchases. Also, adjusting the 1992 base for the percentage change in overall 1993–94 volumes would mean that the actual dollar amounts of the special affordable housing goals for 1993–94 could not be established until 1995. Accordingly, the Notice makes no change in the requirement that 1992 serve as the base for the special affordable housing goal.

FNMA requested that the time provided under the Notice for submission of an estimate of its special affordable 1992 base be extended from 60 to 90 days. Because the Secretary believes that 60 days is a reasonable time to prepare its report, the time period has not been extended. FHLMC requested that it not be required to certify its base; the Notice now requires "a good faith estimate," not a certification.

FNMA and FHLMC objected to the Notice's requirement that, to achieve the low-income portion of the multifamily special affordable housing goal, each dwelling unit must be affordable to low-

[16] FNMA commented in a letter, dated August 9, 1993, from James A. Johnson, Chairman of the Board and Chief Executive Officer, to the Secretary (hereinafter referred to as "FNMA Comment"). FHLMC commented in a letter, dated August 11, 1993, from Leland C. Brendsel, Chairman and Chief Executive Officer, to the Secretary (hereinafter referred to as "FHLMC Comment").

[17] FNMA's letter was from Joseph E. Amato, Director of Regulatory Policy, and FHLMC's letter was from Frank E. Nothaft, Director, Economic Operations/Analysis. Both letters were addressed to Ben E. Laden, Director, Financial Institutions Regulation Staff at HUD and were dated August 18, 1993.

[18] S. Rep. 102–282, 102d Cong., 2d Sess. 36 (1992).

[19] HMDA data for 1992 is not yet available. HMDA data provides no information on purchases by FNMA and FHLMC that would qualify under the multifamily portion of the special affordable housing goal.

[20] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[21] FNMA Comment at 6.

[22] FNMA expects its 1993 business volumes will "equal, if not exceed," the record volumes of 1992. *Id.* at 15. Also, FHLMC referred to "current favorable economic conditions." FHLMC Comment at 5.

income families. FNMA argued that a proportional approach—counting units meeting the goal as provided in sections 1333(d)(3)(A)(ii)(I) and (II), as applicable to the very low-, especially low-income portion of the multifamily goal—should also apply to the low-income portion of the goal. Section 1333(d)(3)(C) specifies proportionality for the very low-, especially low-income portion of the goal but omits this requirement for the low-income portion. Although this can be interpreted as not permitting proportionality for the low-income portion, it may also be read as not precluding a proportional approach. After further review of the legislative history, the Notices have been changed to permit proportional counting for both the low-income and the very low-, especially low-income portions of the multifamily goal.

FHLMC requested that the Notice base the portion of a multifamily mortgage to be counted toward the special affordable housing goal on the number of units, not the rent levels for those units. Because the Secretary has determined that the proportion of rent levels in a project provides a more accurate measure of the portion of a mortgage attributable to affordable units and that the collection of the relevant rental data does not impose a significant burden on the enterprises, this provision has not been changed.

FNMA and FHLMC objected to the requirement that, for purposes of determining whether a seller of seasoned portfolios of loans is engaging in a specific program to use proceeds of sales to originate additional special affordable loans under section 1333(b)(1)(B), the enterprise must enter into "binding agreements" with sellers under which the sellers agree to originate additional loans meeting the requirements of the goal. FNMA and FHLMC commented that lenders might be dissuaded from participating in these programs because of rigid requirements. FHLMC suggested that the usual system of representations and warranties would suffice. FNMA suggested that purchases from "lenders who are wholly 'in the business' of making such loans, such as community loan funds or community investment corporations," automatically qualify without any further assurances.[23] FNMA suggested that for other lenders, the Notice should permit FNMA to implement the Act's requirements as it deems appropriate. The Notice has been modified to make clear that in order to carry out this statutory requirement, the enterprises are responsible for assuring that the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, as required by the Act for the purchases of portfolios of seasoned loans that count toward the goal.

FHLMC suggested that since rehabilitation loans under section 203(k) of the National Housing Act, 12 U.S.C. 1709(k), may not be readily securitized through the Government National Mortgage Association (GNMA), purchases of these loans should qualify under the special affordable housing goal. Section 203(k) rehabilitation loans are readily securitized by GNMA. Accordingly, such loans will not qualify under the special affordable housing goal.

Section 1333(b)(2) states that no credit is to be given under the special affordable housing goals for refinancings of existing enterprise portfolios. FHLMC commented that this should not be interpreted as applying to the enterprises' purchases or securitization of individual mortgages. According to the comments, neither FNMA nor FHLMC would know if such properties had been previously financed by the other enterprise. As provided in the Act, at section 1333(b)(2), this Notice provides that the Secretary will not give any credit toward achieving the special affordable housing goal to any purchases or securitization of mortgages associated with refinancing of FNMA's existing mortgage or mortgage-backed securities portfolios, nor will any credit be given for refinancing of FHLMC's existing portfolios of mortgages or mortgage-backed securities. This does not mean that FNMA may not count the purchase of individual mortgages financing properties that were previously financed by mortgages that had been purchased by FHLMC.

Data and Related Issues

FNMA criticized the use of data from the 1981 Survey of Residential Finance (SRF) analyzing the 1977–80 period because the material allegedly is outdated and overstates multifamily activity. The SRF is conducted decennially; data from the 1991 SRF are not yet available.[24] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of conventional mortgage originations, according to the Department's Survey of Mortgage Lending Activity.

FNMA stated that the Notice's use of HMDA data overstates the size of the central city market because it is based on the "100 Percent Method." The Notice's estimate of the size of the potential central city market is based on data from the SRF and the AHS, not on HMDA data. Also, in the instances where the Notice did utilize HMDA data, in measuring performance, both the proportional method and the "100 Percent Method" were used.

FNMA stated that the "significant financing role performed by FHA/VA in central city and low- and moderate-income housing shrinks [the] universe of eligible loans."[25] The Department's analyses of the market have been conducted only with data on conventional loan originations.

Reporting Requirements

FNMA urged reconsideration of the "rigid, detailed data and reporting requirements for [FNMA] and its lenders."[26] The legislative history makes clear that a key purpose of the transition period is data gathering.[27] Accordingly, while the Notice still conforms to the Congressional intent, changes have been made to reduce the reporting requirements.

FNMA requested that the due date for its annual report be extended from 60 to 90 days after the end of the year. Under section 1328(a) of the Act, the Secretary must report to Congress by June 30 of each year. To assure adequate time to consider data, the due dates for reports have not been revised.

FNMA commented that quarterly reports could be confusing and misleading and may have to be restated, because information needed to determine whether a mortgage purchase counts toward achievement of a goal may not be available until after the end of the first quarter. For example, FNMA stated that the Department's median income estimates are generally not available until April or May. The Notice clarifies that any such information that is released during a quarter need not apply until the start of the next quarter; thus, if median income estimates are released in May, those income levels could, at FNMA's option, apply only to mortgage purchases made on or after July 1.

[23] FNMA Comment at 8.

[24] An alternate estimate of the share of dwelling units found in 1–4 family rental housing can be obtained from the 1991 American Housing Survey (AHS); however, the AHS estimate is not restricted to properties with conventional mortgages and, therefore, is not an appropriate data source.

[25] FNMA Comment at 2 n. 1.

[26] Id. at 4.

[27] See, e.g., S. Rep. 102–282, 102d Cong., 2d Sess. 39 (1992).

FNMA commented that detailed quarterly reports should not be required and, instead, one semiannual report should be required each year. FNMA stated that this could be supplemented by an "abridged version" of a quarterly report and FNMA provided a sample format of such a report. Because the Department needs to evaluate the enterprises' performance on an ongoing basis and particularly during the transition, the Notice maintains the requirement for full quarterly reports.

FHLMC requested that the Department clarify when the first quarterly report will be due, and requested that such report be due after the first full quarter of performance under the Notice. Since the 1993 report will cover the last quarter of 1993, the Notice clarifies that the first quarterly report shall be for the first quarter of 1994.[28]

FNMA objected to the requirement that in reporting mortgages as qualifying under the income-based goals that it "make certain" that incomes of prospective tenants are reasonable. The Notice now requires FNMA to "determine" that such incomes are reasonable.

In determining whether seasoned mortgages count toward any of the goals, FNMA and FHLMC suggested that for mortgages on owner-occupied and single family rental properties the owner- or tenant-occupancy status of dwelling units be evaluated as of the time of mortgage origination, rather than the time of mortgage acquisition, because FNMA and FHLMC lack information on tenancy at the time a seasoned mortgage is acquired; these changes have been made.

Because of the nature of information available, FNMA also requested that the Notice clarify that rents for multifamily rental units be measured at the time of mortgage acquisition; the Notice clarifies this position. FHLMC requested that for purchases of seasoned loans, these requirements only apply to loans originated after January 1, 1993, because much of the required information was not available prior to this date. Pursuant to the Act, income information is essential to determine whether particular dwelling units count toward achievement of the low- and moderate-income housing and special affordable housing goals. Accordingly, the requirements apply to all loans whether or not originated before 1993. Where such information is not available to the enterprises, the Notice provides that mortgages on such properties will not be included in the calculation of any of the housing goals.

For single family rental properties, FNMA and FHLMC stated that income, race, and gender information on tenants required under the Notice is not available to the enterprises. FNMA requested that it not be required to collect and report that data. Section 1324(b)(3) requires the Secretary to "analyze data on income, race, and gender and compare such data with larger demographic, housing, and economic trends" and report that analysis to Congress.[29] This information was intended to assist the Secretary in reporting to Congress. Pending further consideration, the Notice has been changed to require this information only where it is available. However, in the future, data of this nature may be required.

Utility Costs

The Notice previously provided that in applying the rent test of affordability, contract rent could be used where the enterprise knew that all utilities were included.[30] Otherwise, the cost of utilities that were not included had to be added to contract rent. Such utility costs could be the actual costs paid by the renter, the Section 8 utility allowance, or utility costs as calculated under a method approved by the Secretary.

FHLMC commented that the collection of utility data is unnecessarily burdensome and requested that the Notice clarify that FHLMC may use actual utility data, Section 8 data, or an alternative approved by the Secretary; in fact, the proposed Notice stated this, and this Notice reiterates this point. FNMA stated that, although it recognized the need to consider utilities, the utility requirement was unworkable because FNMA has very little information on utilities included in contract rents or on utilities paid by tenants. Thus, FNMA stated that it "would not be able to comply at present with the Notice's requirements for calculating utility costs for all our multifamily properties around the country,"[31] and noted that 140,000 such dwelling units were located in the properties securing the multifamily mortgages it purchased in 1992.

The Department's projections indicate that collection of actual data may be less burdensome than suggested, because these multifamily units were located in approximately 2000 multifamily properties, and obtaining utility information on 2000 properties would not impose an undue data burden on FNMA.

Nonetheless, to ensure that utilities are included in rent, the Department has developed utility allowances, based on information from the 1991 American Housing Survey (AHS). In establishing these allowances, the Department analyzed AHS data on the median costs,[32] based on unit type, paid by renters in both multifamily and single family properties for electricity, gas, oil, and water, for each of the Department of Energy's five Climate Zones.[33] These allowances provide an alternative to the methodologies previously contained in the Notice and should be easily implemented by the enterprises. If these utility allowances are used, the appropriate allowance must be added to the contract rent for the rental unit unless all utilities are included in the contract rent for a unit.[34]

Definitions

FNMA requested that the Secretary allow credit enhancement activities to count as "mortgage purchases" under the low- and moderate-income and central cities goals. The comment described a multifamily credit enhancement transaction carried out with a number of state and local housing agencies in which FNMA puts up mortgages as collateral to reduce the costs of bond financings. FNMA argued that this activity is equivalent to the issuance of a mortgage-backed security under which FNMA assumes the credit risk in the financing of mortgages. Because the described transaction is substantially similar to a mortgage

[28] The first report due under this Notice will be the annual report for 1993, due 60 days after the end of this year.

[29] Sections 1381(p) and 1382(s) require the enterprises to report to Congress and the Secretary "the income class of tenants of rental housing (to the extent such information is available)."

[30] The Department notes that 1991 AHS data indicate that electricity is paid separately from contract rent by tenants in 87 percent of all rental units, and that some utilities are paid separately from contract rent in 89 percent of all rental units.

[31] FNMA Comment at 5.

[32] The AHS medians have been adjusted for the percentage change in the Consumer Price Index for Fuel and Other Utilities between July-December 1991 (the period when the AHS was conducted) and the most recent three month period (May-July 1993).

[33] Because higher costs for oil and gas in colder regions are largely offset by higher costs for electricity in warmer regions, regional variations in utility costs need not be taken into account during the transition period.

[34] In cases where no utilities are included in contract rent, these allowances may yield underestimates of gross rent, and in cases where most utilities are included in contract rent, these allowances may yield overestimates of gross rent. Because the allowances incorporate information of the frequency of inclusion or exclusion of various utility costs in contract rent, these effects will largely offset each other.

purchase, the Notice has been revised to allow qualifying mortgages funded under this particular type of transaction to be counted as mortgage purchases. This Notice only approves this particular credit enhancement transaction to be treated as a mortgage purchase. Other kinds of credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless such transactions are reviewed and specifically approved by the Secretary for this purpose.

FNMA commented that equity investments in low-income housing tax credits (LIHTCs) and purchases of state and local government mortgage revenue bonds (MRBs) should in the future be included as "mortgage purchases." Decisions regarding future goals have not been made.

FHLMC commented that commitments to buy mortgages should be included in the definition of "mortgage purchases." Because a commitment is not equivalent to a "mortgage purchase," the definition has not been changed. However, the Notices now provide that the enterprises may submit information on commitments in their reports to the Secretary concerning the special affordable housing goal.

FHLMC requested that its activities under section 542 of the Act[35] be included in the definition of "conventional mortgage" even though such activities would involve guarantees by the Federal government. Under section 542(a), the Secretary is required to demonstrate the effectiveness of providing new forms of credit enhancement for multifamily loans and to evaluate the effectiveness of entering into arrangements with FNMA and FHLMC involving reinsurance and risk-sharing. The Secretary may then enter into such agreements pursuant to section 542(b), under which the Secretary would assume portions of the risk (section 544(3)).[36] To the extent FNMA or FHLMC assumes credit risk under such agreements and to the extent the enterprises' activities otherwise qualify under the Act and this Notice, the enterprises shall receive partial credit under the goals considering the extent of the enterprises' risk as established under this section 542 program.

FNMA suggested that a "seasoned mortgage" be defined as any mortgage originated five years or more before its purchase by FNMA. FNMA said that lenders may hold adjustable-rate mortgages (ARMs) up to five years after origination. The Department's definition is the customary definition used in mortgage financing and is also used in the definition of "seasoned mortgage" contained in the Glossary to FNMA's Selling Guide, August 15, 1991. The definition of "seasoned mortgage" has not been modified.

FNMA and FHLMC commented that the definition of "mortgage" should include loans on cooperatives; this addition has been made.

FNMA commented that, although "rural" and "underserved" were not defined, the Notice required FNMA to report information on mortgages in rural areas and in underserved areas. The reporting requirements for "underserved" areas has been deleted and a definition for "rural area" has been added to the Notices.

FNMA commented that lenders report to FNMA a category of "other minority," in addition to the minority categories included in the definition of minority. In the Notice, the definition is used in defining "minority census tract" and "concentrated minority census tract" and it is not used in reporting which mortgages are purchased by FNMA from minority borrowers. Accordingly, the definition has not been revised.

FHLMC suggested that, for counties in non-metropolitan parts of a state, the definition of "median income" should permit the use of the greater of the county's median income or the median income for the entire non-metropolitan part of the state. FHLMC stated that this change would aid some families who live in particularly poor counties that may not be low-income based on the county's median income but may be low-income based on the state's non-metropolitan median-income. FHLMC argued that this approach has been applied in defining eligibility for certain housing subsidy programs, including HOME and LIHTCs. The Department notes that under these programs, eligibility is based on a fraction of median family income rather than median income. These programs therefore do not provide pertinent precedents here. The Notice does not change the definition of "median income." Based on data provided during the transition, the Department will study this issue in connection with future goals for rural and underserved areas.

Rent

FHLMC requested that the Notice allow increases in the affordability standard for rents for high-rent areas. In this case, also, the precedent from housing subsidy programs does not apply and such an adjustment is not appropriate. Under other programs, eligibility is based on a fraction of median family income rather than median income. Further, under the test in the Act, 90 percent of all rental housing is affordable to low- and moderate-income families. Accordingly, there is no need to permit adjustment of the test.

FHLMC stated that when it underwrites a multifamily mortgage, the rent used is the average contract rent by unit type. Accordingly, requiring the use of actual contract rent for each individual unit in determining whether units count under the low- and moderate-income housing and special affordable housing goals would be burdensome. The Notice has been revised to require each enterprise to use actual rents on individual units in multifamily properties where actual rents are available; where actual rents are not available, average contract rent by unit type may be used.

Similarly, FHLMC commented that it should be permitted to use either rents or incomes to measure affordability for all units in a single multifamily project and that it should not be required to use both. The Notice has been changed to permit use of either.

Miscellaneous Comments

FNMA and FHLMC objected to the provisions in the Notices that the goals or specifications could be revised using the same procedure as the original issuance of the Notices rather than by regulation. Because there is a special process for establishment of the transitional goals and rulemaking is not required, to maintain flexibility during the transition period this section of the Notice has not been changed.

In connection with determining a property's location for purposes of determining whether the property is located in a central city, FHLMC commented that the Notice's reference to "a smaller geographic segment" should be replaced with "some other geographic segment." The Notice has been changed to reflect FHLMC's suggestion.

Accordingly, the Notice of Interim Housing Goals is set forth as follows:

Interim Housing Goals for the Federal Home Loan Mortgage Corporation

I. The Low- and Moderate-Income Housing Goals
II. The Central Cities Housing Goals
III. The Special Affordable Housing Goal
IV. General Requirements
V. Definitions
VI. Revision of the Notice
VII. Monitoring and Enforcing Compliance
VIII. Housing Finance Reports

[35] Codified as a note to 12 U.S.C. 1707.
[36] *Id.*

I. The Low- and Moderate-Income Housing Goals

A. Establishment

Under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4561–4567), the goals for the purchase of mortgages on housing for low- and moderate-income families are intended to achieve increased purchases by the Federal Home Loan Mortgage Corporation (FHLMC) of such mortgages.

In establishing the low- and moderate-income housing goals, section 1332(b)(1)–(6) of the Act requires the Secretary to consider:

1. National housing needs;
2. Economic, housing, and demographic conditions;
3. The performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;
4. The size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and
6. The need to maintain the sound financial condition of the enterprises.

B. Underlying Data

In considering the factors under the Act to establish these goals, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) (HMDA), and data gathered from FHLMC, to determine national housing needs; economic, housing, and demographic conditions; the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market; and the ability of FHLMC to lead the industry. The Secretary used data provided by FHLMC and data gathered under HMDA to determine FHLMC's prior performance in meeting the needs of low- and moderate-income families and FHLMC's financial condition.

C. Consideration of the Factors

1. National Housing Needs

Housing affordability is a problem for many American families nationwide.[37] Between 1979 and 1989, households paying more than 30 percent of their income for housing rose from 42 percent to 43 percent among renters, and from 17 percent to 19 percent among owners.[38]

Affordability problems are greatest among low- and moderate-income renters and are most frequent and severe among the lowest income renters. In 1989, when the average gross rent/income ratio for renters with incomes in excess of area median income was 21 percent, this ratio was 62 percent for renters with incomes below 30 percent of median and 38 percent for renters with incomes between 31 and 50 percent of median.[39]

The percentage of American families owning their own home increased in virtually every year of the 1960s and the 1970s, reaching a peak of 65.8 percent in 1980. The homeownership rate then fell below 65 percent during the first half of the 1980s. In the last few years, declining home prices and lower mortgage rates have reduced the cost of owning a home. However, due to unemployment and weak income growth, this cost reduction has not led to an increase in the homeownership rate, which stood at 64.3 percent in the first half of 1993—below the rates for 1972–84.[40] The average income of the greatest source of potential first-time home buyers, married couples, aged 25–29, who rent, was $24,946 in 1991, down from $26,600 in 1989 (both in 1989 constant dollars). Among the 25–29 age group, the homeownership rate declined to 32.8 percent in 1991, down from 43.3 percent in 1980. Sharp declines in homeownership have also occurred for families in which the head of household is 30–39 years of age.[41]

Examined by income, the drop in home ownership during the 1980s was greatest among low- and moderate-income families—ownership rates remained constant or increased among households with incomes above area median. Among low- and moderate-income families, declines in ownership were greatest among families with children. Indeed, among moderate income families, ownership rates actually rose between 1978 and 1989 for all household types other than families with children; the ownership rate for families with children dropped from 78 to 70 percent.[42]

During the 1980s, the rate of new household formations declined and, in the 1990s, the rate is expected to decline further to an estimated 1,205,000 households annually.[43] The number of people turning twenty years of age will start to grow again in the mid-1990s.

The Act requires FHLMC to play a major role in assisting low- and moderate-income households in obtaining housing. During the next few years, homes will be more affordable for many people due to lower inflation and lower interest rates. Slow growth of households, discussed above, should mean moderate demand in the housing market, allowing continuation of favorable market conditions for new home buyers. Under these conditions, the opportunity exists for significant growth of the homeownership rate in the population, including that for low- and moderate-income families, and this growth can be affected substantially by the activities of FHLMC.

2. Economic, Housing, and Demographic Conditions

A number of developments in economic, housing, and demographic conditions are of concern to the Secretary, including:

a. *The number of homeless individuals.* The precise number of homeless individuals is difficult to determine, but a study by the Urban Institute estimated that there were between 496,000 and 600,000 homeless persons in the United States during a seven-day period in March 1987, and more than one million persons were homeless at some time during that year.[44] The Congressional Budget Office estimated a one-day homeless population of approximately 700,000 for 1991.[45] The Census Bureau supplemented its regular 1990 census operations with a special one-night "Street and Shelter Night" count of the homeless, and found more than 228,000

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[37] Since the early 1980s, "affordable housing" has meant housing for which the homeowner or renter pays no more than 30 percent of family income for housing costs, including utilities.

[38] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[39] Tabulations of U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991) performed by HUD Office of Policy Development and Research.

[40] U.S. Department of Commerce News, Bureau of the Census, Census Bureau Reports on Residential Vacancies and Homeownership (July 23, 1993).

[41] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 12, 28 (1992).

[42] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed?", 3 Housing Policy Debate 1, 21 (1992).

[43] Armijo, Berson, Obrinsky, and Valgeirsson, "Demographic and Economic Trends," 1 J. Housing Research 21, 26 (1990).

[44] Interagency Council on the Homeless, Executive Summary: The 1990 Annual Report of the Interagency Council on the Homeless 20 (1991).

[45] *Id.* at 21. This figure was based on a memorandum written by the Congressional Budget Office which used the 1987 Urban Institute study as its starting point and was updated using a 5 percent annual growth rate.

homeless individuals at emergency homeless shelters and at pre-identified street locations on the night of March 20, 1990.[46]

b. *The number of low-income renter households spending 50 percent or more of their income on housing,* which rose from 4.3 million in 1978 to 5.4 million in 1989.[47]

c. *The increase in the percentage of poor homeowners paying a high proportion of their income for housing costs.* Specifically, 30.6 percent of poor homeowners spent 60 percent or more of their income on housing in 1978; this figure rose to 33.1 percent in 1989.[48]

d. *The decline in the number of low rent units in the housing stock.* The affordable rental housing stock (the number of rental units with rents less than $300 per month, in constant 1989 dollars) fell from 9.9 million units in 1974, to 9.5 million units in 1985, and 9.0 million units in 1989.[49] The decline has been greatest for affordable unsubsidized units, which fell from 7.8 million in 1974 to 5.0 million in 1989.[50]

e. *The drop in multifamily housing starts.* In 1991, only 138,000 units in new private multifamily structures (5 or more units) were started; in 1992, this figure rose minimally to 139,000 units, but for the first half of 1993, multifamily starts have fallen below the 1991 level.[51] Multifamily starts in 1991 and 1992 were far below the annual average of 457,000 units for 1964–90.[52] The total number of private housing units started in 1991 was at the lowest level since World War II. Although starts rose by 18.5 percent in 1992, to 1.2 million units, they were still below the levels attained in 26 of the 30 years from 1960 through 1989.

The current housing market is characterized by an increase in the refinancing of existing mortgages. The volume of refinancings depends primarily on changes in interest rates. When interest rates fall significantly, homeowners can reduce their borrowing costs by refinancing their mortgages, and refinancings often become a high percentage of FHLMC's total business. Conversely, when interest rates rise significantly, refinancings usually become a small share of mortgage activity.

In 1982, the average 30-year fixed rate mortgage interest rate reached a record high of 15.1 percent. This rate declined steadily through 1988 to 9.2 percent, but it still exceeded the rates that prevailed in the 1960s and 1970s. In 1989 and 1990, mortgage rates again exceeded 10 percent, before dropping to an average of 8.2 percent in 1992. The July 1993 rate was 7.20 percent—the lowest level since 1968.[53]

As a result of the increase in mortgage interest rates from 1988 to 1989, refinancings decreased from 24 percent of all mortgage originations in the first half of 1988 to 20 percent in the first half of 1989. As a result of the sharp decline in mortgage interest rates in 1991 and 1992, refinancings accounted for 52 percent of all mortgages closed in 1992.[54]

HMDA data indicates that in 1990 the income levels of families refinancing closely approximated the income levels of families obtaining home purchase mortgages. In that year, 25.0 percent of home purchase conventional mortgage originations were made to borrowers with incomes below area median; the corresponding figure for refinancings was also 25.0 percent. If only conventional mortgages below the conforming loan limit were counted, these 1990 percentages would both rise to approximately 28 percent.[55] Analysis of the 1991 HMDA data by the Federal Reserve Board indicates that about 32 percent of conforming conventional home purchase mortgages were made to borrowers with incomes below area median; the corresponding figure for refinancings was about 28 percent. Despite the difference in data for the low- and moderate-income shares of home purchase mortgages and refinancings, the data also suggest that even if half of FHLMC's mortgage purchases were refinancings, FHLMC could still reach the 30 percent low- and moderate-income target. A high volume of refinancings would not prevent FHLMC from meeting the goals in this Notice.

The demographic composition of persons seeking housing has changed significantly in recent years, reflecting changes in family structure. Single-person and single-parent households have increased as a portion of the population more than other household types. The number of single-parent households increased by 15 percent between 1985 and 1989; the number of married-couple households with children did not change significantly during the same period. Only 35 percent of single-parent households were homeowners compared to 74 percent of married couples. Although single-parent households had lower monthly housing costs than married couples with children, single-parent households, on average, pay a larger proportion of their family income for housing costs than married couples with children (24 percent compared to 19 percent, respectively, for owners; 34 percent compared to 23 percent, respectively, for renters).[56]

The Bureau of the Census has reported growing inequality in the distribution of income from 1981 to 1991. Those in the lowest 20 percent income group saw their share of aggregate household income decrease from 4.1 percent in 1981 to 3.8 percent in 1991, while those in the highest 20 percent income group saw their share of aggregate household income increase from 44.4 percent to 46.5 percent between 1981 and 1991.[57] This greater disparity in incomes has led to increases in both the number of affluent homeowners and the number of persons who find it difficult to purchase adequate shelter.

The rental vacancy rate fell as low as 5.0 percent in the late 1970s and the early 1980s, but it has exceeded 7 percent from 1986 through the first half of 1993. Despite the large number of vacant units and weak economic growth, monthly rental costs (in 1989 constant dollars) declined by only 1.2 percent by 1991 from the 20 year peak rental costs of 1987 and 1988.[58]

Congress included goals for the purchase of mortgages on housing for low- and moderate-income families in

[46] Interagency Council on the Homeless, Fact Sheet, "How Many Homeless People Are There?," April 1991, No. 1–1.

[47] Nelson and Khadduri, "To Whom Should Limited Housing Resources Be Directed," 3 Housing Policy Debate 1, 16 (1992).

[48] Center on Budget and Policy Priorities and Low Income Housing Service, A Place to Call Home 5 (April 1989) and U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 at 112 (July 1991).

[49] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992). The 1989 figure reflects Census adjustment of fuel and utilities measurement.

[50] *Id.* at 35–36.

[51] Council of Economic Advisers, Economic Indicators 19 (August 1993).

[52] Data on multifamily housing starts is not available for years prior to 1964.

[53] Council of Economic Advisers, Economic Indicators 30 (August 1993) and Economic Report of the President 428 (January 1993).

[54] Monthly average refinancing data obtained from FHLMC's Primary Mortgage Market Survey (February 8, 1993).

[55] Canner and Gabriel, "Market Segmentation and Lender Specialization in the Primary and Secondary Mortgage Markets," 3 Housing Policy Debate 255–257, 282 (1992) [hereinafter "Canner and Gabriel"].

[56] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Housing Characteristics of One-Parent Households: 1989 Series H–121, No. 92–2 1–2 (1992).

[57] U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census, Money Income of Households, Families, and Persons in the United States: 1991 Series P–60, No. 180 xiv-xv (1992).

[58] Joint Center for Housing Studies of Harvard University, The State of the Nation's Housing 35 (1992).

the Act to ensure that FHLMC's affirmative obligation to facilitate the financing of housing for low- and moderate-income families is carried out. Current economic, housing, and demographic conditions substantiate the need for and support these goals for financing housing for low- and moderate-income families as set forth in this Notice.

3. Performance and Effort of FHLMC Toward Achieving the Goal in Previous Years

While these are the first low- and moderate-income goals established under this Act, some data is available concerning the income of homeowners whose mortgages were purchased by FHLMC for the 1990–92 period. An analysis of this data, gathered under the Home Mortgage Disclosure Act (HMDA), shows that 24 percent of mortgages purchased by FHLMC in 1990 provided financing for home buyers with income less than area median family income.[59] Analysis of 1991 HMDA data by the Federal Reserve Board shows that this percentage increased in 1991, to about 26 percent.

In a letter to the Secretary,[60] Leland C. Brendsel, the Chairman and Chief Executive Officer of FHLMC stated that FHLMC has analyzed a small sample of the loans it purchased in the first half of 1992. This analysis found that 24 percent (± 2–3 percent) of these loans met the tests for purchases of mortgages on housing of low- and moderate-income families under the Act.

Based on the HMDA data and FHLMC's analysis, the Secretary has determined that the percentage of FHLMC's purchases of mortgages on housing for low- and moderate-income families was approximately 26 percent in 1991 and 22 to 26 percent in 1992. FHLMC's absence from the multifamily market had a substantial effect on its ability to finance housing for low- and moderate-income families. As stated in Mr. Brendsel's letter, "[T]he purchase of multifamily mortgages is imperative to accomplishing [FHLMC's] affordable housing mission."[61]

4. Size of the Conventional Mortgage Market Serving Low- and Moderate-Income Families Relative to the Overall Conventional Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 30 percent of those families who recently purchased or refinanced their homes, and who obtained conventional mortgages below the conforming loan limits, had incomes below the area median. Based on this data, even if FHLMC's purchases consisted primarily of mortgages secured by owner-occupied homes, FHLMC could achieve the Act's target for purchases of mortgages on housing for low- and moderate-income families by buying a representative sample of the mortgages available in the market.

For rental properties, current data on the income of prospective or actual tenants has not been readily available to FHLMC in the past. Where such income information is not available, the Act provides that a rent level is affordable if it does not exceed 30 percent of the maximum income level for the low-income or moderate-income category, with appropriate adjustments for unit size as measured by the number of bedrooms. Analysis of American Housing Survey data shows that 93 percent of all rental units and 78 percent of unsubsidized rental units constructed in the last three years had gross rents of less than 30 percent of area median family income.

To calculate the size of the potential market for mortgages financing housing for low- and moderate-income families, data on the number of owner-occupied dwelling units, rental units in 1–4 unit properties, and rental units in multifamily properties are necessary. In determining the proportions of dwelling units in these three different types of properties, the Secretary has utilized data from the 1981 Survey of Residential Finance[62] on the number of properties with conventional mortgages acquired during the 1977–80 period, and the average number of dwelling units for each type of property, derived from the same source.[63] Based on this data, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties.[64] Applying the percentages of affordable dwelling units (30 percent of owner-occupied dwelling units and 78 percent of rental dwelling units are affordable to low- and moderate-income families) to these percentages of properties results in the Secretary's conclusion that 52 percent of the dwelling units secured by conventional mortgages, eligible for purchase by FHLMC, are affordable to low- and moderate-income families.[65] These calculations show that FHLMC, through a program that includes purchases of both owner-occupied and rental properties, including multifamily properties, should be able to achieve the 30 percent target established in the Act.

5. FHLMC's Ability To Lead the Industry

FHLMC's ability to lead the industry depends on its role in the mortgage market as well as its profitability. FHLMC and the Federal National Mortgage Association (FNMA) together purchased approximately 65 percent of all conventional conforming single family mortgages in 1992—up from 17 percent in 1980, 33 percent in 1985, and 52 percent in 1991.[66]

The report on the Federal Housing Enterprises Regulatory Reform Act of 1992, S. 2733, by the Senate Committee on Banking, Housing, and Urban Affairs discussed FHLMC's profitability, and

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[59] Canner and Gabriel, *supra* note 55, at 241, 279, and 282. The majority of refinanced mortgages are conventional mortgages.

There are several differences between the data gathered under HMDA and the data required to evaluate compliance with the low- and moderate-income housing goal under the Act including that the HMDA data: (1) concerns the number of home mortgages, while the Act refers to dwelling units—thus, the HMDA data does not distinguish between a 100-unit multifamily property with a single mortgage and a 1-unit property; (2) excludes all loans outside of metropolitan areas (MSAs); and (3) is derived only from reports from financial institutions that have more than $10 million in assets and either have a branch located in an MSA or receive applications for 5 or more mortgage loans from such an area—the HMDA database excludes small institutions that do not lend in metropolitan areas.

[60] Dated January 26, 1993.

[61] *Id.* at 4.

[62] A commonly-used source of information on mortgage originations is HUD's Survey of Mortgage Lending Activity. However, for this analysis, that survey is inadequate, because the data are expressed in dollar terms, not in terms of the number of dwelling units, and the survey distinguishes only between single family (1–4 unit) and multifamily (5 or more unit) properties—no information is provided on rental units in 1–4 unit properties.

[63] With regard to multifamily properties, the 1977–80 period is comparable to the 1987–90 period—in both cases, multifamily conventional mortgage originations averaged 7.9 percent of the total dollar volume of single family and multifamily conventional mortgage originations.

[64] HUD Office of Policy Development and Research, 1991 Report to Congress on the Federal National Mortgage Association 100 (1992).

[65] The 52 percent figure was derived by adding the following: (1) 16.05% (percentage of owner-occupied units [53.5%] times percentage of those units that are affordable to low- and moderate-income families [30%]); (2) 14.74% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are affordable to low- and moderate-income families [78%]); and (3) 21.53% (percentage of rental units in multi-family properties [27.6%] times percentage of those units that are affordable to low- and moderate-income families [78%]). The 52 percent figure is a conservative estimate because it is based on the 78 percent estimate for newly-constructed affordable rental units rather than the 93 percent estimate for all affordable rental units.

[66] FNMA Economics Department. By itself, FHLMC purchased approximately 23 percent of all conventional conforming single family mortgages in 1992.

noted that FNMA and FHLMC "have grown more than 130 percent in the last five years, while profits have grown even faster." [67] The enterprises have had "a fivefold expansion [in profits] in just five years, a period that included one of the nation's most severe recessions." [68] The Committee noted "the contrast between the [enterprises'] increasing financial success and the worsening availability of affordable housing," [69] and stated that "the capabilities of the [enterprises] partially to fill this gap are larger than ever." [70] In light of FNMA's and FHLMC's market dominance, strength, and high profitability, FHLMC, along with FNMA, is able to lead the industry in making mortgage credit available for low- and moderate-income families.

6. Need To Maintain FHLMC's Sound Financial Condition

FHLMC's financial condition depends on its profitability, the adequacy of its capital, and the safety and soundness of its operations. The Senate report on the Act stated: "The combined profits of [FHLMC] and [FNMA] approached $2 billion in 1991 compared to $350 million in 1986." [71] FHLMC's profits increased from $555 million in 1991 to $662 million in 1992 and FHLMC's net income in the first half of 1993 was 25 percent above the level of the first half of 1992. FHLMC's return on average equity averaged 23.4 percent over the 1988–92 period—far above the rates achieved by most financial corporations.

The Secretary has concluded that the low- and moderate-income housing goals will not endanger the adequacy of FHLMC's capital or the safety and soundness of its operations and that achievement of the goals will not impair FHLMC's sound financial condition.

D. Determination

Based on available data, the Secretary has concluded that FHLMC's purchases of mortgages on housing for low- and moderate-income families accounted for approximately 26 percent of the total number of dwelling units financed by FHLMC's mortgage purchases in 1991 and approximately 24 percent in 1992. Accordingly, FHLMC has not yet achieved the 30 percent target established for the purchase of mortgages on housing for low- and moderate-income families. Therefore, in accordance with the Act, these goals are established so that FHLMC will improve its performance relative to the target to the maximum extent feasible and so that FHLMC will meet the 30 percent target by the end of 1994.

The Secretary has determined that the interim goals set forth below address national housing needs and current economic, housing, and demographic conditions, and take into account FHLMC's performance in the past in purchasing low- and moderate-income mortgages, as well as the size of the conventional mortgage market serving low- and moderate-income families. Moreover, the Secretary has considered FHLMC's ability to lead the industry as well as FHLMC's financial condition. These goals will require an increase in FHLMC's low- and moderate-income housing business, including its return to the multifamily market, to reach the statutory targets of 30 percent by 1995. The Secretary has determined that these goals are necessary and achievable.

E. The Interim Low- and Moderate-Income Housing Goals

The annual goal for 1993 for FHLMC's purchases of conventional mortgages financing housing for low- and moderate-income families is established at 28 percent of the total number of dwelling units financed by FHLMC's mortgage purchases; the annual goal for 1994 is 30 percent.

II. The Central Cities Housing Goals

A. Establishment

Under the Act, these goals are intended to achieve increased purchases by FHLMC of mortgages on housing located in central cities.

The Act provides that the Secretary shall monitor performance of both FNMA and FHLMC in carrying out these goals and "shall evaluate such performance * * * based on the location of the properties subject to mortgages purchased by each enterprise." (Section 1334(c).) Units will be counted under these goals if the units are located in a "central city" as defined under the Act. Through the use of geocoding or any similarly accurate and reliable method, FHLMC shall determine, and report to the Secretary, whether units financed under mortgages purchased by FHLMC are located in central cities. Where FHLMC cannot determine the exact location of a property but can determine that the property is located in a census tract, or within a census place code, block-group enumeration district, nine-digit zip code, or another appropriate geographic segment, that includes at least part of a central city, the percentage of dwelling units that may be counted as central city units is equal to the percentage of the population of the geographic segment that resides within the central city—this method is referred to as the "proportional method."

In establishing the interim central cities goal, section 1334(b)(1)–(6) of the Act requires the Secretary to consider:

1. Urban housing needs;
2. Economic, housing and demographic conditions;
3. The performance and efforts of the enterprises toward achieving the central cities goal in previous years;
4. The size of the conventional mortgage market for central cities relative to the size of the overall conventional mortgage market;
5. The ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities; and
6. The need to maintain the sound financial condition of the enterprises.

The geographic goals for mortgage purchases by FHLMC established by the Act will apply to rural areas and other underserved areas as well as central cities beginning on January 1, 1995. At this time, for the 1993–94 period, these goals apply only to the purchases of mortgages on housing located in central cities. Thus, in this discussion reference is made only to central cities goals and targets.

B. Underlying Data

In establishing the central cities goal and in considering the factors under the Act, the Secretary relied upon data, including data gathered under American Housing Surveys, other government data, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 *et seq.*), and data gathered from FHLMC, to determine central city housing needs; economic, housing and demographic conditions; and the size of the conventional mortgage market serving central cities relative to the size of the overall conventional mortgage market. The Secretary used data provided by FHLMC and data gathered under HMDA to determine prior performance in meeting the needs of central city residents and FHLMC's financial condition.

C. Consideration of the Factors

1. Urban Housing Needs

In its report on the Act, the Senate Committee on Banking, Housing, and Urban Affairs commented on the housing needs of urban areas:

> Housing problems in general, and access to capital in particular, are acute in our nation's cities * * *. Their economic distress is a vital issue, not only to the cities immediately

[67] S. Rep. No. 102–282, 102d Cong., 2d Sess. 28 (1992).
[68] *Id.*
[69] *Id.*
[70] *Id.* at 29.
[71] *Id.* at 28.

affected, but to the entire nation * * *. [C]apital for housing finance is a serious need. Unfortunately, the Committee finds that city residents, for a variety of reasons including discriminatory practices, do not have the access to mortgage capital that non-urbanites enjoy.[72]

Data on various aspects of housing in the central cities has been collected in the 1989 American Housing Survey.[73] Housing conditions in central cities are illustrated by comparing this data with the corresponding data for the suburbs, as follows:

a. *Income of occupants.* One of every six central cities' households (16.6 percent) fell below the poverty line in 1989, nearly twice the rate for suburban households (8.7 percent). Similarly, median household income was much lower in central cities—$25,062, versus $33,244 in the suburbs.

b. *Homeownership.* A sharp divergence exists between the percentage of homeownership in central cities and other areas—in 1991 the homeownership rate was 48.7 percent in central cities, 70.2 percent in the suburbs, and 73.2 percent outside of MSAs.[74]

c. *Housing costs.* Despite the lower incomes in central cities, monthly housing costs as a percentage of income are somewhat higher in central cities—averaging 23 percent of income in urban areas, versus 21 percent in the suburbs. The size of this gap partly reflects the fact that renters, who generally have higher housing costs relative to income, make up a higher share of households in urban areas than in the suburbs. But even with some adjustment for the rental/owner-occupied mix, many central city residents still pay higher costs for housing—*e.g.*, 20 percent of renters in central cities paid more than 50 percent of their income for housing costs, versus 18 percent in the suburbs.

d. *Age of structure.* In the suburbs, 79 percent of housing structures have been built since 1950—versus 59 percent in central cities. On average, suburban structures, with a median construction date of 1968, are 12 years newer than central city structures, with a median construction date of 1956.

e. *Condition of structure.* In the suburbs, 2.7 percent of occupied dwelling units reported severe physical problems in plumbing, heating, electrical service, upkeep, or public areas—versus 4 percent in central cities. Approximately 5.9 percent of suburban units reported inadequate heating in the preceding winter—versus 8.7 percent in central cities.

f. *Unemployment.* In 1992 the unemployment rate in central cities was 8.9 percent, well above the 6.6 percent rate for the suburbs, the 7.5 percent rate for metropolitan areas as a whole, and the 7.1 percent rate for nonmetropolitan areas. The difference in jobless rates was especially pronounced in the poorest areas—14.0 percent for metropolitan poverty areas, and 8.6 percent for nonmetropolitan poverty areas.[75]

g. *Minorities.* Members of minority groups are especially disadvantaged by housing conditions in central cities, because a majority of such individuals live in central cities. The 1989 American Housing Survey found that 60 percent of Black households were located in central cities, 26 percent were in the suburbs, and 14 percent were outside of metropolitan areas. For Hispanics, the corresponding percentages were 52 percent, 39 percent, and 9 percent. For other households, 27 percent were located in central cities, 49 percent were in the suburbs, and 24 percent were outside of metropolitan areas.

Based on this data, the Secretary believes that it is essential for FHLMC to play a greater role in addressing the serious housing needs of the central cities.

2. Economic, Housing, and Demographic Conditions

Compared to suburban and nonmetropolitan areas, central cities have a much higher percentage of households with "worst case" housing needs. Such households include unassisted renters with incomes that do not exceed 50 percent of area median income who have been displaced, renters who pay more than half of their income in rent and utilities, or households that live in severely substandard housing. Over half of households with worst case problems were in central cities in 1989, even though cities housed only one-third of all households.[76] In the 44 large metropolitan areas surveyed separately by the American Housing Survey, 10 percent of city households had worst case problems, compared to only 4 percent of suburban households.[77]

This factor is the same as the second factor considered under the goal for housing for low- and moderate-income families. Accordingly, see paragraph I.C.2., for additional discussion of this factor.

Congress included housing goals for central cities in the Act to ensure that the benefits of mortgage financing from FHLMC's secondary market activities would be available in the central cities. Current economic, housing, and demographic conditions substantiate the need and support the goals for housing located in central cities as set forth in this Notice.

3. Performance and Effort of FHLMC toward Achieving the Goal in Previous Years

Data gathered under the Home Mortgage Disclosure Act (HMDA) shows that 36 percent of all conventional conforming home purchase and refinanced mortgages purchased by FHLMC in 1990 (for which the property location was reported) were on properties located in central cities.[78] The Federal Reserve Board's estimate for 1991, based on HMDA data, is that 34 percent of the mortgages purchased by FHLMC were on properties located in central cities. These calculations included all mortgages on housing located in any census tract where at least part, but not necessarily all, of the census tract was in a central city. Calculation of central city mortgage purchases in this manner is known as the "outer circle method."

FHLMC has provided the Department with a breakdown by geographic location of the number of dwelling units in the properties whose mortgages it purchased in 1990, based on a 1-in-1,000 random sample.[79] These FHLMC data indicate that 30 percent of the dwelling units in the properties whose

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[72] *Id.*

[73] U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989, at 35, 187, 249, 372, 374, 377, 378, 384, 385, 414, 416, 419, 420, 426, and 427 (July 1991).

[74] U.S. Bureau of the Census, Housing Vacancies and Homeownership Annual Statistics: 1991, Current Housing Reports, Series H111/91–A, 34 (1992). The lower homeownership rate in central cities may, to some degree, reflect the preferences of urban dwellers.

[75] Department of Labor, Employment and Earnings 244–46 (January 1993). Poverty areas are census tracts in which 20 percent or more of the residents were poor, according to the 1990 decennial census.

[76] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989, 15 (1991).

[77] HUD Office of Policy Development and Research, The Location of Worst Case Needs in the Late 1980s (1992).

[78] Canner and Gabriel, *supra* note 55, at 273. The HMDA data is based on a review of loans originated and sold to FHLMC in 1990 by lenders with assets of at least $10 million. Of those 1990 loans, 79 percent provided sufficient geographic information to determine whether the property was located in a central city; the remaining 21 percent consisted of loans where lenders were not required to include a census tract number, lenders failed to supply a number, or the number was incorrect.

[79] HUD Office of Policy Development and Research, 1991 Report to Congress on the Federal Home Loan Mortgage Corporation 106, 107 (1992).

mortgages it purchased in 1990 were located in central cities.[80]

In a letter to the Secretary,[81] the Chairman and CEO of FHLMC stated that FHLMC has analyzed a small sample of the loans it purchased in the first half of 1992. This analysis found that 28 percent of these loans met the test for purchases of mortgages on housing located in central cities under the Act. In making these estimates for 1992, FHLMC used the more inclusive "outer circle method" rather than the "proportional method." The proportional method allocates mortgages in census tracts that straddle central city boundaries based on the portion of the population that resides in the central city in such census tracts.[82]

FHLMC's estimate that 28 percent of its mortgage purchases in 1992 were on properties located in central cities is less than the HMDA estimates of its central city purchases for 1990 and 1991 (36 percent and 34 percent, respectively), although FHLMC's estimate, like the HMDA estimates, is based on the "outer circle method." Some of this difference is due to the fact that HMDA data is derived from reports from financial institutions that have more than $10 million in assets and either have a branch located in a metropolitan area (MSA) or receive applications for five or more mortgage loans from such an area. Thus the HMDA database excludes very small institutions and institutions that do not have offices in or lend in metropolitan areas, but it is doubtful that this exclusion could account for a discrepancy of this magnitude.

FHLMC's estimate of its 1992 central city purchases is also well below FHLMC's estimate for 1990, based on a sample and a method which appears to be comparable to the "proportional method," that 30 percent of its mortgage purchases were on properties located in central cities. The Secretary does not know if FHLMC's purchases of mortgages on central city properties fell significantly in 1992, or if some other reasons account for these discrepancies.

The Secretary has determined that, where FHLMC cannot ascertain the exact location of a property but can determine in which census tract the property is located, the proportional method provides a better means than the outer circle method for measuring the percentage of mortgage purchases on housing located in central cities.[83] The Secretary is unable to resolve the apparent differences between various estimates of the level of FHLMC's central city activity. Therefore, the Secretary accepts FHLMC's most recent estimate that 28 percent of its mortgage purchases in 1992 were on properties located in central cities, based on the "outer circle method." This estimate must be reduced to make it consistent with the "proportional method" preferred by the Secretary.[84] Such an adjustment would reduce FHLMC's estimate of its 1992 central city purchases below 25 percent, to approximately 22 percent. FHLMC's absence from the multifamily market had a substantial effect on its ability to finance housing located in central cities.

4. Size of the Conventional Mortgage Market for Central Cities Relative to the Size of the Overall Conventional Mortgage Market

Data from the American Housing Survey for 1985, 1987, and 1989 indicate that, overall, 24 percent of all recent mortgages from owner-occupier home buyers and owners who refinanced, and who obtained conventional mortgages below the conforming loan limits, were secured by properties located in central cities. For 1- to 4-family rental properties, 42 percent of all rental units and 32 percent of unsubsidized rental units constructed in the preceding three years were located in central cities. For multifamily rental properties, 58 percent of all rental units and 47 percent of unsubsidized rental units constructed in the preceding three years were located in central cities.

Based on data from the 1981 Survey of Residential Finance, discussed above, the Secretary estimates that, of total dwelling units in properties with recently acquired conventional mortgages, 53.5 percent were owner-occupied units, 18.9 percent were in 1–4 family rental properties, and 27.6 percent were located in multifamily rental properties. Utilizing the percentages of dwelling units located in central cities (24 percent of owner-occupied units, 32 percent of recently constructed rental units in 1- to 4-family rental properties, and 47 percent of recently constructed rental units in multifamily rental properties) results in the Secretary's conclusion that 32 percent of the dwelling units secured by conventional mortgages are located in central cities.[85] These calculations show that through a program that includes purchases of mortgages on both owner-occupied and rental properties, including multifamily properties, FHLMC should be able to improve its performance from 26 percent to achieve the 30 percent target established in the Act.[86]

5. FHLMC's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.5., for a discussion of this factor.

6. Need To Maintain FHLMC's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. Accordingly, see paragraph I.C.6., for discussion of this factor.

D. Determination

Based on available data, the Secretary has concluded that FHLMC's purchases of mortgages on housing located in central cities were approximately 22 percent of the total number of dwelling units financed by FHLMC's mortgage purchases in 1992. Accordingly, FHLMC has not yet achieved the 30 percent target established for the purchase of mortgages on housing in central cities. Therefore, in accordance with the Act, these goals have been established so that FHLMC will improve its performance relative to the target to the maximum extent feasible and so that FHLMC will meet the 30 percent target by the end of 1994.

[80] FHLMC estimated that the 95 percent confidence interval for the percentage of the dwelling units in central cities in its 1991 purchases was 30% ±3%, *i.e.*, the probability is 95 percent that the central city percentage was between 27 percent and 33 percent.

[81] Dated January 26, 1993, from Leland C. Brendsel.

[82] This approach has been implemented using census tract data. However, FHLMC may choose to use other geographic segments such as census place codes, block-group enumeration districts, or nine-digit zip codes.

[83] As discussed above, FHLMC may choose to use smaller geographic segments such as census place codes, block-group enumeration districts, or nine-digit zip codes.

[84] FNMA data indicate that using the proportional method results in a percentage that is approximately 22 percent less than the result of the outer circle method.

[85] The 32 percent figure was derived by adding the following: (1) 12.84% (percentage of owner-occupied units [53.5%] times the percentage of those units that are located in central cities [24%]); (2) 6.05% (percentage of rental units in 1–4 family properties [18.9%] times percentage of those units that are located in central cities [32%]); (3) 12.97% (percentage of rental units in multifamily properties [27.6%] times percentage of those units that are located in central cities [47%]).

[86] The Federal Reserve Board's preliminary analysis of 1991 HMDA data indicates that 36.2 percent of conforming conventional home purchase mortgages and 33.5 percent of refinancings were on properties located in central cities. Because these two percentages are similar, a high volume of refinancings would not prevent FHLMC from attaining the goals in this Notice.

Having considered the factors for establishing the goal, the Secretary has determined that the goals established below address urban housing needs and economic, housing and demographic conditions and take into account FHLMC's performance in the past in purchasing mortgages on properties in central cities, as well as the size of the conventional mortgage market for central cities. Moreover, in establishing these goals the Secretary has considered FHLMC's ability to lead the industry as well as FHLMC's financial condition. The Secretary has determined that these goals are both necessary and achievable, assuming FHLMC's reentry to the multifamily market.

The Secretary is determined to achieve an end to redlining and other forms of discrimination that severely reduce the availability of housing finance in central cities. As noted in the Senate report on the Act: "Inadequate access to mortgage credit is a particular problem which results, in large part, from the vestiges of redlining and the unintended consequences of [FNMA's and FHLMC's] orientation toward suburban and 'plain vanilla' mortgages." [87] In establishing the central cities goals at the levels listed below, the Secretary expects FHLMC, along with FNMA, to significantly increase the availability of financing for housing in central cities and to act forcefully and effectively towards ending problems of redlining and mortgage discrimination in the primary mortgage market.

E. The Interim Central Cities Goals

1. The Goals

The annual goal for 1993 for FHLMC's purchase of conventional mortgages on housing located in central cities is established at 26 percent of the total number of dwelling units financed by FHLMC's mortgage purchases in 1993; the annual goal for 1994 is 30 percent.

2. Counting Methodology

a. The dwelling unit(s) located in central cities and financed by FHLMC's mortgage purchases shall count toward achievement of this goal. FHLMC shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances dwelling unit(s) located in a central city.

b. *Proportional Method.* Where FHLMC cannot precisely determine whether a mortgage is on dwelling unit(s) located in a central city but can determine that the mortgage is on dwelling unit(s) located in a census tract, or within a census place code, block-group enumeration district, or nine-digit zip code, or another appropriate geographic segment, that is partially located in a central city, a fraction of the dwelling units covered by the mortgage shall count toward achievement of this goal. Such fraction is the ratio of the population of the geographic segment that is located in the central city to the total population of the geographic segment.

III. The Special Affordable Housing Goal

A. Establishment

Under the Act, the goal for the purchase of mortgages on housing to meet the then-existing, unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families is intended to achieve increased purchases by FHLMC of such mortgages.

In establishing the special affordable housing goal, section 1333(a)(2)(A)-(E) of the Act requires the Secretary to consider:

1. Data submitted to the Secretary in connection with the special affordable housing goal in previous years;

2. The performance of the enterprise toward achieving the special affordable housing goal in previous years;

3. National housing needs within the categories covered by the special affordable housing goal;

4. The ability of the enterprise to lead the industry in making mortgage credit available for low- and very low-income families; and

5. The need to maintain the sound financial condition of the enterprise.

B. Underlying Data

In considering the factors under the Act to establish the special affordable housing goal, the Secretary relied upon data, including data gathered under the American Housing Survey, other government reports, the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801 et seq.), and data gathered from FHLMC. There is no experience with these goals and inadequate information is available on relevant prior performance. The Secretary utilized data provided by FHLMC to determine its financial condition and its ability to lead the industry.

C. Consideration of the Factors

1. Data Submitted to the Secretary in Connection With the Special Affordable Housing Goal for Previous Years

FHLMC has not operated under the special affordable housing goal in prior years and FHLMC has not submitted any relevant data to the Secretary to date. Since 1990, FHLMC has been absent from the multifamily market and, thus, did not purchase any multifamily mortgages in 1991 or 1992 that would have qualified under a special affordable housing goal.

2. Previous Performance and Effort of FHLMC

FHLMC established an Affordable Housing Initiatives Department (AHID) in 1990 to develop new affordable homeownership and rental programs. According to FHLMC, AHID has achieved the following: "creating customized homeownership programs with targeted lenders to meet the affordable housing needs of their communities; maintaining partnerships with state and local governments, public agencies and nonprofit groups to develop alternative approaches to providing affordable homeownership opportunities; and supporting low-income rental housing production through investments in tax credit equity funds and purchasing low-income rental housing mortgages through the National Community Development Initiative." [88] It has been reported that only eight staff members are working in AHID.[89] FHLMC's ability to develop innovative programs for housing for very low- and especially low-income families may currently be limited by FHLMC's staffing of AHID.

Based on HMDA data, in 1990 FHLMC purchased a lower percentage (12.1 percent) of new conventional mortgages and refinanced mortgages from low-income families than the corresponding share of mortgage originations for such families (14.1 percent for new conventional mortgages and 14.3 percent for refinanced mortgages). Conversely, in that same year, FHLMC purchased a higher percentage (13.6 percent) of new conventional mortgages and refinanced mortgages from families with 100 to 120 percent of area median income than the corresponding share of mortgage originations (11.8 percent for new conventional mortgages and 11.7 percent for refinanced mortgages).[90]

[87] S. Rep. No. 102–282, 102d Cong., 2d Sess. 38 (1992).

[88] *Home Mortgage Disclosure Act: Joint Hearings Before the Subcomms. on Consumer Affairs and Coinage and on Housing and Community Development, of the Comm. on Banking, Finance and Urban Affairs, House of Representatives,* Serial No. 102–120, 102d Cong., 2d Sess. 517 (1992) (statement of Leland C. Brendsel, Chairman and Chief Executive Officer of FHLMC). More specific initiatives are discussed in FHLMC's 1991 *Annual Report* at 16.

[89] *Inside Mortgage Finance,* April 24, 1992.

[90] Canner and Gabriel, *supra* note 55, at 255–257, 279. Data for families with incomes in excess of 120 percent of area median income has not been

The previous performance of FHLMC and the importance of FHLMC's absence from the multifamily market was noted in the Senate report on the Act:

According to the data made available under the Home Mortgage Disclosure Act [in] October [1991], 9.8 percent of [FNMA's and FHLMC's] prime business activity—purchases of mortgages securing single-family homes—is comprised of loans made to borrowers with incomes below 80 percent of area median. A substantial portion of the units financed by any multifamily mortgages [FNMA and FHLMC] purchase likely serve tenants with such incomes * * *.

[T]here is significant consensus among a wide coalition of affordable housing participants that [FNMA and FHLMC] can expand their activity in the low-income arena. The HMDA data and other evidence reveal that [FNMA's and FHLMC's] existing single-family business underserves low-income families living in census tracts where the median income is 80 percent or below as well as very low-income families (families with incomes below 50 percent of area median).

The multifamily arena is equally troubling. In September 1990, [FHLMC] suspended new business for its multifamily program, after suffering large losses as a result of poor underwriting, fraud, and geographic concentration in housing markets in Atlanta and New York.[91]

3. National Housing Needs for Very Low- and Low-Income Families, Low-Income Families in Low-Income Areas, and Families Whose Incomes Do Not Exceed 50 Percent of the Median Income for the Area

Data obtained under the Home Mortgage Disclosure Act (HMDA) for 1991 indicates some of the difficulties faced by low-income families seeking mortgages. The conventional mortgage origination rate (percentage of conventional mortgage applications approved) decreases as the income of the applicant(s) decreases, with the approval rate being the lowest for low-income families:

Area median income	Percent of mortgage approval rate
Less than 80 percent	60
80 to 99 percent	75
100 to 120 percent	78
More than 120 percent	79

Low-income approval rates were especially low for Hispanics (54 percent) and Blacks (45 percent)—versus 62 percent for Whites and 69 percent for Asians. Similarly, approval rates were lowest for applicants seeking mortgages in lower income census tracts—66 percent in tracts having median income less than 80 percent of area median income—versus 72 percent in tracts having median income between 80 and 120 percent of area median income, and 80 percent in tracts having median income in excess of 120 percent of area median income.[92]

Data from the American Housing Survey indicates that needs for affordable housing are more pressing in these lowest income categories than among moderate-income families. In 1989, 19 million households with below-median incomes had affordability problems, paying more than 30 percent of their income for housing and utilities. Almost three-fourths (74 percent) of these families with affordability problems had incomes below 50 percent of area median income. Another 12 percent of the families with affordability problems had very low incomes, between 50 percent and 60 percent of area median income.

In 1989, some 5 million renter households had "worst case" housing needs, as defined in section II.C.2. According to Congress, these unassisted renters with incomes below 50 percent of area median income should receive priority in rental assistance due to their severe housing problems.[93] In 1989, over 75 percent of unassisted renters in this income category had an affordability problem, *i.e.*, paid more than 30 percent of their income for gross rent, while 48 percent had a severe affordability problem, *i.e.*, paid more than half of their income for housing. Among owners in this lowest income category, one-third had an affordability problem and one-sixth had a severe affordability problem.[94] Among families with income between 50 percent and 80 percent of area median income, one-third of renters and one-tenth of owners had an affordability problem.

The relative decline in inexpensive dwelling units has been concentrated among the least expensive rental units—those with rents affordable to families with incomes below 30 percent of median income. Whereas in 1979 the number of units in this rent range was 28 percent less than the number of renters with incomes below 30 percent of area median income, by 1989 the gap had widened to 39 percent, a shortage of 2.7 million units.[95]

4. FHLMC's Ability To Lead the Industry

This factor is the same as the fifth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.5. for discussion of this factor.

5. Need To Maintain FHLMC's Sound Financial Condition

This factor is the same as the sixth factor considered under the goal for mortgage purchases on housing for low- and moderate-income families. See I.C.6. for discussion of this factor.

D. Determination

This goal is intended to increase the purchase by FHLMC of mortgages financing rental and owner-occupied housing to meet the unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

FHLMC has not functioned under this special affordable housing goal in the past and data available to the Secretary does not clearly show the extent to which FHLMC has achieved the objectives of this goal in the past. The legislative history of the Act specifically provides that one of the purposes of this goal is "to increase [FNMA's and FHLMC's] purchase of mortgages serving low-income families above and beyond their existing performance and commitments * * *."[96] Accordingly, this goal requires FHLMC to purchase $1.5 billion in mortgages during the transition period above and beyond FHLMC's existing performance and commitments. This Notice requires FHLMC to provide the Secretary with a good faith estimate of the amount of purchases it made in 1992 that would have qualified under each part of this special affordable housing goal had it applied in 1992. The Notice requires FHLMC to purchase that amount of mortgages in both 1993 and in 1994, in addition to the $1.5 billion of mortgage purchases for 1993–94.

Havng considered the factors for establishing the goal, the Secretary has established this special affordable housing goal.

analyzed, because a significant fraction of such mortgage originations may exceed the conforming loan limit for purchases by FHLMC.

[91] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

[92] Canner and Smith, "Expanded HMDA Data on Residential Lending: One Year Later," Federal Reserve Bulletin 808, 810, and 812 (Nov. 1992).

[93] HUD Office of Policy Development and Research, Priority Housing Problems and "Worst Case" Needs in 1989 (1991).

[94] *Id.*

[95] "Affordable rent" has been defined above as gross rent not in excess of 30 percent of family income. Tabulations by HUD Office of Policy Development and Research, based on U.S. Departments of Housing and Urban Development and Commerce, American Housing Survey for the United States in 1989 (July 1991).

[96] S. Rep. No. 102–282, 102d Cong., 2d Sess. 36 (1992).

E. The Special Affordable Housing Goal

1. The Goal

a. The special affordable housing goal, during the two year period beginning on January 1, 1993, shall include mortgage purchases by FHLMC of not less than:

(1) For 1993–94, one and one-half billion dollars ($1,500,000,000) of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families, subdivided as follows—at least seven-hundred fifty million dollars ($750,000,000) shall be mortgages on single family housing and at least seven-hundred fifty million dollars ($750,000,000) shall be mortgages on multifamily housing; plus

(2) For 1993, the dollar amount of FHLMC's purchases as estimated under paragraph E.1.b.; plus

(3) For 1994, the dollar amount of FHLMC's purchases as estimated under paragraph E.1.b.

b. FHLMC shall provide the Secretary within 60 days a good faith estimate of the dollar amount of its 1992 mortgage purchases that would have qualified under each part of this special affordable housing goal if the goal had applied in 1992.

c. *Multifamily goal.*

(1) Of the multifamily mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be on multifamily housing where rental dwelling units are affordable to low-income families; and

(b) 55 percent of the dollar volume of such mortgages shall be on multifamily housing in which:

(i) At least 20 percent of the units are affordable to especially low-income families; or

(ii) At least 40 percent of the units are affordable to very low-income families.

(2) Only a portion of the dollar amount of mortgages purchased by FHLMC on multifamily housing that are attributable to units meeting the requirements under paragraph E.1.c.(1)(a) or (b) shall count toward the special affordable housing goal under paragraph E.1.c.(1). The portion of a mortgage to be attributed to achievement of this goal shall be equal to the ratio of the total rents of dwelling units affordable to low-income families to the total rents for the mortgaged property.

(3) During the transition period, multifamily mortgages purchased in excess of the $750,000,000 special affordable housing goal for multifamily mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.c.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FHLMC to assure that the ratios in paragraph E.1.c.(1) are satisfied for such additional units.

d. *Single family goal.*

(1) Of the single family mortgages purchased under the dollar amounts set forth in paragraph E.1.a.(1):

(a) 45 percent of the dollar volume of such mortgages shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income;[97] and

(b) 55 percent of the dollar volume of such mortgages shall be mortgages of very low-income families.

(2) For a mortgage to count toward the special affordable housing goal under paragraph E.1.d.(1), the mortgagor(s) must meet the qualifications in either paragraph E.1.d.(1) (a) or (b). Units are affordable under paragraph E.1.d.(1)(a) where occupied by low-income families living in census tracts in which the median income does not exceed 80 percent of the area median income. Units are affordable under paragraph E.1.d.(1)(b) where occupied by very low-income families.

(a) In the case of a mortgage financing a one unit property occupied by an owner, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1) (a) or (b).

(b) In the case of a mortgage financing a two-to-four unit property, full credit will be given if the mortgagor meets the qualifications in either paragraph E.1.d.(1) (a) or (b) and each rental unit is affordable under paragraph E.1.d.(2). A portion (as provided in paragraph E.1.d.(3)) of the mortgage may contribute to achieving the special affordable housing goal if only some of the rental units are affordable.

(3) The portion of a mortgage to be attributed to achievement of this single family goal shall be equal to the ratio of the total number of rooms in owner-occupied or affordable units to the total number of rooms in all dwelling units in the mortgaged property. For purposes of this ratio, the number of rooms in a dwelling unit shall equal the number of bedrooms plus one; for example, an efficiency is considered one room, a one-bedroom unit is considered two rooms, etc.

(4) During the transition period, single family mortgages purchased in excess of the $750,000,000 special affordable housing goal for single family mortgages may count toward the goal without reference to the percentages applicable to the subgoals in paragraph E.1.d.(1) as long as they meet any of the subgoals. The purpose of this provision is to maximize the purchases of mortgages on special affordable housing during the transition period without requiring FHLMC to assure that the ratios in paragraph E.1.d.(1) are satisfied for such additional units.

e. Each mortgage purchase, or portion of a mortgage where only a portion counts toward achievement of this goal, shall count only once toward achievement of the goal, *i.e.*, shall count under only one subgoal. For example, the purchase of a single family mortgage of a very low-income family on a property located in a census tract in which the median income does not exceed 80 percent of the area median income would count toward achievement of the subgoal under either paragraph E.1.d.(1)(a) or E.1.d.(1)(b), but not under both.

2. Full, Partial and No Credit Activities

a. The Act requires the Secretary to establish guidelines under which mortgage purchases receive full credit, partial credit, or no credit toward achievement of the special affordable housing goal.

b. *Full Credit.* The following activities shall receive full credit toward achievement of the special affordable housing goal:

(1) The purchase or securitization of federally insured or guaranteed mortgages where:

(a) Such mortgages cannot be readily securitized through the Government National Mortgage Association (GNMA) or any other Federal agency;

(b) Participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

(c) The mortgages involved are on housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

Mortgages under the Federal Housing Administration's Home Equity Conversion Mortgage (HECM) Insurance Demonstration Program, section 255 of the National Housing Act, 12 U.S.C. 1715z-20, and the Farmers Home Administration's Guaranteed Rural Housing Loan Program, 7 U.S.C. 1933, meet the requirements of paragraphs E.2.b.(1)(a) and E.2.b.(1)(b).

(2) The purchase or refinancing of existing, seasoned portfolios of loans where:

[97] Determination of median census tract income and area median income shall be based on data from the most recent decennial census.

(a) The seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal; and

(b) Such purchases or refinancings support additional lending for housing that otherwise qualifies under the goal.

(3) The purchase of direct loans made by the Resolution Trust Corporation (RTC) or the Federal Deposit Insurance Corporation (FDIC) where such loans:

(a) Are not guaranteed by the RTC, FDIC, or other Federal agencies;

(b) Are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

(c) Are made for the purchase of housing that otherwise qualifies under the special affordable housing goal to be considered for purposes of such goal.

c. For purposes of determining whether a seller is engaging in a specific program to use proceeds of sales to originate additional loans that meet the special affordable housing goal:

(1) A seller must currently operate or actively participate in an on-going program that will result in originating additional loans that meet the goal; actively participating in such a program includes actively participating with a qualified housing group that operates a program resulting in the origination of loans that meet the requirements of the goal; and

(2) To determine whether a seller meets this requirement, FHLMC shall verify and monitor that the seller meets the requirement and develop any necessary mechanisms to ensure compliance with this requirement.

d. *No Credit.* Neither the purchase nor the securitization of mortgages associated with the refinancing of FHLMC's existing mortgage or mortgage-backed securities portfolio shall receive credit toward the achievement of the special affordable housing goal; refinancings by FHLMC of FNMA's mortgage or mortgage-backed securities portfolio shall not receive credit, but FHLMC's purchases of individual mortgages financing properties where the mortgage on the property had in the past been purchased by FNMA may receive credit toward achievement of the goal. For purposes of this paragraph, "portfolios of mortgages" includes mortgages retained by FNMA or FHLMC and mortgages utilized to back mortgage-backed securities.

IV. General Requirements

A. Properties With Multiple Dwelling Units

For the purposes of meeting the goals, whenever the real property securing a conventional mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

B. Credit Toward Goals

For the purposes of meeting the goals, a mortgage purchase (or dwelling unit financed by such purchase) by FHLMC shall contribute to the achievement of each housing goal for which such purchase (or dwelling unit) qualifies. All mortgages purchased by FHLMC on or after January 1, 1993 may count under these goals provided such mortgages meet the requirements of this Notice. Mortgages originated prior to January 1, 1993 and purchased after that date may count only if FHLMC has the information needed to determine whether such a mortgage counts toward achievement of any of the goals.

C. Income Level Definitions

1. *Moderate-income* means:

a. In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	70
2	80
3	90
4	100
5 or more	(1)

[1] 100 percent plus—85 percent multiplied by the number of persons in excess of 4.

2. *Low-income* means:

a. In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	56
2	64
3	72
4	80
5 or more	(1)

[1] 80 percent plus—8.4 percent multiplied by the number of persons in excess of 4.

3. *Very low-income* means:

a. In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	42
2	48
3	54
4	60
5 or more	(1)

[1] 60 percent plus—4.8 percent multiplied by the number of persons in excess of 4.

4. *Especially low-income* means:

a. In the case of owner-occupied units, income not in excess of 50 percent of area median income; and

b. In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percent of area median income
1	35
2	40
3	45
4	50
5 or more	(1)

[1] 50 percent plus—4 percent multiplied by the number of persons in excess of 4.

D. Owner-occupied Properties

FHLMC's performance under these goals for purchases of mortgages on owner-occupied housing will be evaluated based on the income of the mortgagor(s) at the time of origination of the mortgage. To determine whether mortgagor(s) may be counted under the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the mortgagor(s) is compared to the median income for the area at the time of mortgage origination, using the appropriate percentage factor provided under paragraph C. (*i.e.*, 50 percent of area median income for especially low-income families, 60 percent for very low-income families, 80 percent for low-income families, and 100 percent for moderate-income families).

E. Rental Units

1. Use of Income, Rent

FHLMC's purchases of mortgages on rental dwellings may be counted under the goals based on whether such mortgages qualify as mortgages on housing for low- and moderate-income families or on housing qualifying under the special affordable housing goal, based on the income of actual or prospective tenants where such data is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program. FHLMC shall require lenders to provide tenant income information to FHLMC but only where such information is known to the lender. Where such data is not available for all units in a project, FHLMC's performance will be evaluated based on rents adjusted for unit size.

2. Income of Actual Tenants

Where the income of actual tenants is available, to determine whether tenant(s) may be counted for the particular family income level, *i.e.*, especially low-, very low-, low-, or moderate-income, the income of the tenant(s) is compared to the median income for the area, adjusted for family size as provided in paragraph C.

3. Income of Prospective Tenants

a. Where income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be based on the maximum income level established under such housing program for that unit. FHLMC shall require lenders to provide such prospective tenants' income information to FHLMC but only where such information is known to the lender. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, FHLMC must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

b. For purposes of determining whether a rental dwelling unit is affordable to especially low-, very low-, low-, or moderate-income families and qualifies under one or more of these goals, the income of the prospective tenants must be adjusted for unit size as a proxy for family size if family size is not known:

(1) For moderate-income, the income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	(1)

[1] 104 percent plus—12 percent multiplied by the number of bedrooms in excess of 3;

(2) For low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	(1)

[1] 83.2 percent plus—9.6 percent multiplied by the number of bedrooms in excess of 3;

(3) For very low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	(1)

[1] 62.4 percent plus—7.2 percent multiplied by the number of bedrooms in excess of 3;

and

(4) For especially low-income, income of prospective tenants must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	(1)

[1] 52 percent plus—6 percent multiplied by the number of bedrooms in excess of 3.

4. Use of Rent

Where the income of the prospective or actual tenants of a dwelling unit is not available, FHLMC's performance under these goals will be evaluated based on whether the rent is affordable. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of especially low-, very low-, low-, or moderate-income families as follows:

a. For moderate-income, maximum affordable rents to count as housing for moderate-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	(1)

[1] 31.2 percent plus—3.6 percent multiplied by the number of bedrooms in excess of 3;

b. For low-income, maximum affordable rents to count as housing for low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	(1)

[1] 24.96 percent plus—2.88 percent multiplied by the number of bedrooms in excess of 3;

c. For very low-income, maximum affordable rents to count as housing for very low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	(1)

[1] 18.72 percent plus—2.16 percent multiplied by the number of bedrooms in excess of 3;

or

d. For especially low-income, maximum affordable rents to count as

housing for especially low-income families must not exceed the following percentages of area median income with adjustments depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	(1)

[1] 15.6 percent plus—1.8 percent multiplied by the number of bedrooms in excess of 3.

F. Purchase of Refinanced or Seasoned Mortgages

1. Refinanced Mortgages

Generally, the purchase of a refinanced mortgage by FHLMC may be counted as a mortgage purchase for purposes of these goals to the extent the mortgage qualifies. However, there are specific restrictions under the special affordable housing goal as set forth at paragraph III.E.2.

2. Seasoned Mortgages

The purchase of a seasoned mortgage may be treated as a mortgage purchase for purposes of these goals. A seasoned mortgage for a single family dwelling unit shall be considered for purposes of the goals based on mortgagor(s)' income (for owner-occupied dwelling units), tenant income or rent levels (for rental dwelling units), and area median income as of the time of mortgage origination. For multifamily dwelling units, a seasoned mortgage will be considered based on rental information (for rental dwelling units), income (for owner-occupied dwelling units) and area median income as of the time that FHLMC purchases the mortgage.

G. Newly Available Data

Where data is used by FHLMC to determine whether a mortgage purchase qualifies under any goal and such data is released after the start of a calendar quarter, FHLMC need not use the data until the start of the following quarter—FHLMC may continue to use the data that was available at the beginning of the quarter. For example, if the Secretary publishes the annual list of area median incomes in March, FHLMC need not use the new median income data until April 1 (the previous year's list could be used for the quarter ending March 31).

H. Actions to Be Taken To Meet the Goals

To meet the goals established in this Notice, FHLMC shall:

1. Design programs and products that facilitate the use of assistance provided by the Federal, State, and local governments;

2. Develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

3. Develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers; and

4. Take affirmative steps to assist:

a. Primary lenders to make housing credit available in areas with concentrations of low-income and minority families; and

b. Insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977.

Such steps shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures.

V. Definitions

Central city means, for purposes of determining the proportion of FHLMC's purchases of mortgages on housing located in central cities during a particular calendar year, any political subdivision designated as such, as of January 1 of that year by the Statistical Policy Office, Office of Management and Budget of the Executive Office of the President in the document entitled *Metropolitan Areas* or successor publication.

Concentrated minority census tract means a census tract in which minority residents comprise 80 percent or more of the total population in the census tract.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges which are included in the contract rent. To count multifamily units under the low- and moderate-income and special affordable housing goals, contract rent must be determined using actual rent for each unit where such information is available; where actual rent information for each unit is not available, average contract rent by unit type may be used for units in the property.

Conventional mortgage means a mortgage other than a mortgage as to which FHLMC has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Dwelling unit means a single, unified combination of rooms designed for use as a dwelling by one family.

FHLMC means the Federal Home Loan Mortgage Corporation.

FNMA means the Federal National Mortgage Association.

Housing for low- and moderate-income families means:

1. Any owner-occupied dwelling unit, other than a secondary residence, (including a dwelling unit in a condominium, cooperative or planned unit development project), financed by a conventional mortgage, where the income of the mortgagor(s) at the time of origination does not exceed the median income of the area where the dwelling unit is located;

2. Any rental dwelling unit, where the income of the prospective or actual tenant(s) of the unit is available, that is, known to a lender because, for example, such information is required as a condition of an existing federal housing program, if the income of the tenant(s) is low-income or moderate-income, adjusted for family size of the tenant(s) as established in this Notice; or

3. Any rental dwelling unit, where the income of the prospective or actual tenants of a rental dwelling unit is not available, financed by a conventional mortgage, which has a rent affordable to low- and moderate-income families. A rent is affordable to a low-income family if the rent does not exceed 30 percent of the maximum income level for low-income and a rent is affordable to a moderate-income family if its rent does not exceed 30 percent of the maximum income level for moderate-income, with appropriate adjustments for unit size as set forth in this Notice.

Low- or moderate-income census tract means a census tract in which the median family income is less than or equal to 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area, as most recently determined and published by the Secretary. An area means the metropolitan statistical area (MSA) if the property is located in an MSA; otherwise, an area means the county in which the property is located.

Minority means any individual who is included within any one or more of the following racial and/or ethnic categories:

1. American Indian or Alaskan Native—a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition;

2. Asian or Pacific Islander—a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands;

3. Black—a person having origins in any of the black racial groups of Africa; and

4. Hispanic—a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Minority census tract means a census tract in which minority residents comprise 50 percent or more of the total population in the census tract.

Mortgage means a member of such classes of liens as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage purchase means a transaction in which FHLMC buys or otherwise acquires with cash or other thing of value a conventional mortgage for its portfolio or for securitization. Mortgage purchases do not include commitments to buy mortgages at a later date or time. Mortgage purchases, for purposes of the low- and moderate-income housing goal and the central cities housing goal, include credit enhancement transactions where: (1) FHLMC provides specific mortgages it owns as collateral to guarantee bonds issued by a state or local housing finance agency to finance housing; and (2) FHLMC assumes a credit risk in the transaction by pledging or guaranteeing repayment and such credit risk is substantially equivalent to that assumed by FHLMC if it had securitized the mortgages financed by such State or local housing finance agency. Dwelling units financed under this type of credit enhancement transaction shall count toward meeting the low- and moderate-income and central cities goals to the extent dwelling units qualify under this Notice. Other credit enhancement transactions will not be considered mortgage purchases and will not count under these goals unless they are reviewed and specifically approved by the Secretary for this purpose. Mortgage purchases include FHLMC's activities under HUD's Multifamily Mortgage Credit Demonstration Program but only as determined by the Secretary considering FHLMC's risk under any such agreement entered into with the Secretary under the authority of section 542 of the Housing and Community Development Act of 1992 (codified as a note to 12 U.S.C. 1707); the extent of the credit will be determined by the Secretary at a later date based on the specific requirements of the program.

Portfolio of loans means two or more loans.

Rent means:

1. The contract rent for a dwelling unit, but only where such contract rent includes all utilities for the dwelling unit;

2. Where the contract rent for a dwelling unit does not include all utilities, the contract rent for the dwelling unit plus the actual cost of utilities not included in the contract rent; or

3. The contract rent for a dwelling unit plus a utility allowance as set forth in this Notice for the unit.

Rent may be determined under any one of the methods provided in paragraph 1., 2., or 3. The Secretary may authorize FHLMC to use a different method of calculating utility costs but, until such authorization is provided, FHLMC shall use one of the methods provided in paragraph 1., 2., or 3.

Rural area means any census tract located in an area which is designated as rural by the U.S. Bureau of the Census for the 1990 census.

Seasoned mortgage means a mortgage which has been closed for more than one year before being purchased by FHLMC.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at any one time.

Secretary means the Secretary of Housing and Urban Development and any person delegated authority by the Secretary to perform a particular function for the Secretary.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means:

1. The amount to be added to contract rent where utilities are not included in contract rent (also called the "AHS-derived utility allowance") in the following table that corresponds to the type of property (multifamily or single family) and the unit size, based on the number of bedrooms—

Type of property	Efficiency	Number of bedrooms		
		1	2	3 or more
Multifamily	$45	$51	$69	$91
Single family	65	70	96	122

or

2. The utility allowance established under the HUD Section 8 Program, section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) for the area where the property is located.

VI. Revision of the Notice

A. Procedure for Revision

The Secretary may change, restructure or otherwise revise any of the annual goals or other requirements necessary to implement the transition provisions in this Notice. The Secretary shall establish any such revisions by Notice in the **Federal Register** after providing FHLMC with an opportunity to review and comment not less than 30 days before the issuance of such Notice. The Notice, as changed, shall be effective when published.

B. Factors for Revision

In changing a goal, the Secretary shall consider the same factors considered in establishing the particular goal in this Notice.

VII. Monitoring and Enforcing Compliance

A. Compliance

The Secretary shall monitor and enforce compliance with these interim goals under section 1336 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Credit

This Notice sets forth the extent to which FHLMC will receive full credit, partial credit, and no credit for mortgage purchases.

C. Refinanced and Seasoned Mortgages

The Secretary will monitor the purchase of refinanced and seasoned mortgages to determine whether such purchases serve the purposes of these interim goals.

VIII. Housing Finance Reports

A. Report on Actions Planned To Meet Interim Goals

On or before November 29, 1993, FHLMC shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate an initial report describing the actions that FHLMC plans to take to meet the interim goals as required by section 1337 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

B. Data on Single Family Mortgage Purchases

Within 60 days after the end of each calendar year, FHLMC shall submit to the Secretary, in a form determined by the Secretary, data relating to its mortgage purchases on housing consisting of 1–4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The income, census tract location or smaller geographic segment location, gender, and race or national origin of mortgagors.

2. The loan-to-value ratio of mortgages at the time of origination.

3. Whether the mortgage is newly originated or seasoned.

4. The number of units in the housing subject to the mortgage and whether the units are owner-occupied.

5. Other characteristics that the Secretary considers appropriate to the extent practicable, including, but not limited to:

a. Whether the mortgage is for securitization or portfolio;

b. Whether the mortgage is on property from FHLMC's real estate owned (REO) portfolio;

c. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

d. For mortgages on owner-occupied properties, whether the mortgagor is a first-time home buyer; and

e. For mortgages on rental properties:

(1) If available to the lender, the income, gender, and race or national origin of tenants; and

(2) If such rental units have been counted toward achievement of the low- and moderate-income or special affordable housing goals—

(a) The income of tenants, if used to determine whether the property counts toward achievement of a goal;

(b) The rent levels of rental units;

(c) The demographics of the area where counted under the special affordable housing goal.

Collection, maintenance and submission of these data in this paragraph B. shall be considered to fulfill the requirements of section 307(e)(1) of the FHLMC Act, as amended (12 U.S.C. 1456). FHLMC shall report on the foregoing characteristics of single family mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FHLMC need not report data which is not reasonably available from the lender on such mortgages but FHLMC shall report the number of such mortgages for which data are not reported.

C. Data on Multifamily Mortgage Purchases

Within 60 days after the end of each calendar year, FHLMC shall submit to the Secretary, in a form determined by the Secretary, data relating to mortgage purchases on housing consisting of more than 4 dwelling units during the year. Such data shall include the following information for each mortgage:

1. The census tract location or smaller geographic segment location of the housing.

2. The income levels (if available) and characteristics of tenants (as specified by the Secretary) in the housing.

3. Rent levels for units in the housing.

4. Mortgage characteristics (including the number of units financed per mortgage and the amount of loans).

5. Mortgagor characteristics including whether nonprofit, for-profit, or limited equity cooperative.

6. Use of funds, i.e., whether the mortgage is for new construction, rehabilitation, purchase of an existing property, or refinancing.

7. The type of originating institution.

8. Other information that the Secretary considers appropriate to the extent practicable, including but not limited to:

a. Whether the mortgage was newly originated or seasoned at the time of purchase;

b. Whether the mortgage is for securitization or portfolio;

c. Whether the mortgage is on property from FHLMC's real estate owned (REO) portfolio; and

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law.

Collection, maintenance and submission of the data in this paragraph C. shall be considered to fulfill the requirements of section 307(e)(2) of the FHLMC Act, as amended (12 U.S.C. 1456). FHLMC shall report on the foregoing characteristics of multifamily mortgages that were purchased after December 31, 1992. However, where mortgages were originated prior to January 1, 1993 and purchased after that date, FHLMC need not report data which is not reasonably available from the lender on such mortgages but FHLMC shall report the number of such mortgages for which data are not reported.

D. Annual Reports on Interim Housing Goals

Within 60 days after the end of each calendar year, FHLMC shall submit to the Secretary a report or reports on its performance during the calendar year in achieving the interim goal for mortgage purchases on housing for low- and moderate-income families, the interim goal for mortgage purchases on housing in central cities, and the interim special affordable housing goals set forth in this Notice. This material may be submitted in one combined report or separate reports concerning each of these goals. The report concerning each housing goal shall specify the dollar volume, the number of units, and the number of mortgages on owner-occupied and rental properties purchased by FHLMC that do and do not qualify under such goal as set forth in this Notice. The report(s) shall include, at a minimum, the following:

1. The number of units and dollar volume of mortgage purchases by number of units in property.

2. Whether the mortgages are for newly constructed properties, rehabilitated properties, purchases of existing properties, or refinancing.

3. Whether the mortgages are newly originated or seasoned.

4. Whether the mortgages are on property from FHLMC's real estate owned (REO) portfolio;

5. In the report concerning the low- and moderate-income housing goal:

a. Whether the units are owner-occupied or rental;

b. Whether the units are for low-income, moderate-income or other; and

c. Where the units are rental, whether the determination as to whether the units are for low-income, moderate-income or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the number of units shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the number of units shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income).

6. In the report concerning the Special Affordable Housing goal:

a. Whether the units financed are housing of low-, very low- or especially low-income or other families;

b. Where the units are rental, whether the determination as to whether the units are for especially low-, very low-, low-income, or other is based on:

(1) Tenant income; where tenant income is used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by family size and income level (both in dollars and as percentages of area median income); or

(2) Rent levels; where rent levels are used, detailed data on the dollar volume of mortgage purchases shall be provided cross-classified by unit size and rent levels (both in dollars and as percentages of area median income);

c. Whether (if single family and low-income) the median income of the census tract does or does not exceed 80 percent of area median income;

d. Whether the mortgage has been used in conjunction with public subsidy programs under Federal law;

e. For seasoned mortgages, whether the seller(s) of seasoned portfolios of loans are engaged in a specific program to use the proceeds of such sales to originate additional loans that meet the special affordable housing goal, and whether the seller(s) are viable, on-going enterprises that will for the foreseeable future be originating loans that meet the goal, including FHLMC's basis for concluding that the seller(s) are such enterprises and are engaged in such a specific program; and

f. Although not required, FHLMC may report on commitments to purchase mortgages.

7. In the report concerning the central cities housing goal, whether the property is located in a central city, rural area, low- or moderate-income census tract, minority census tract, concentrated minority census tract, or other geographical area as required by the Secretary.

8. Such other detail as is requested in writing by the Secretary.

E. Quarterly Reports on Interim Housing Goals

Within 60 days following the end of each of the first three calendar quarters of each year, FHLMC shall submit to the Secretary a report which shall provide the same information described in paragraph D. for mortgages purchased by FHLMC in the previous quarter. The first quarterly report under this Notice shall include data concerning the first quarter of calendar year 1994.

F. Annual Reports on Actions Taken

Within 60 days following the end of each calendar year, in order to assist the Secretary in preparing the Annual Report to the Congress, FHLMC shall provide:

1. A description of actions that FHLMC has undertaken during the preceding year or is planning to undertake to promote and expand its purchases of mortgages on housing for low- and moderate-income families.

2. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand its purchases of mortgages on properties located in central cities.

3. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand its purchases of mortgages on housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

4. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand its attainment of its statutory purposes as set forth in the FHLMC Act, section 301(b).

5. A description of any FHLMC efforts to standardize credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products.

6. A description of actions that FHLMC has undertaken or is planning to undertake to promote and expand opportunities for first-time home buyers.

7. Any actions taken under section 1325(5)[98] with respect to originators found to violate fair lending procedures; and

8. Such other information that the Secretary considers necessary for the report and requests in writing.

G. Additional Analyses

The Secretary may request that the data underlying the reports required under paragraphs A. through F. be provided to the Secretary or that FHLMC conduct additional analysis and submit additional reports as the Secretary determines necessary to facilitate the Secretary's establishment, monitoring, and enforcement of these goals.

Authority: Sections 1331–37 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4561–67, enacted as Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992).

Dated: October 7, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–25182 Filed 10–12–93; 8:45 am]

BILLING CODE 4210–32–P

[98] Codified at 12 U.S.C. 4545(5).

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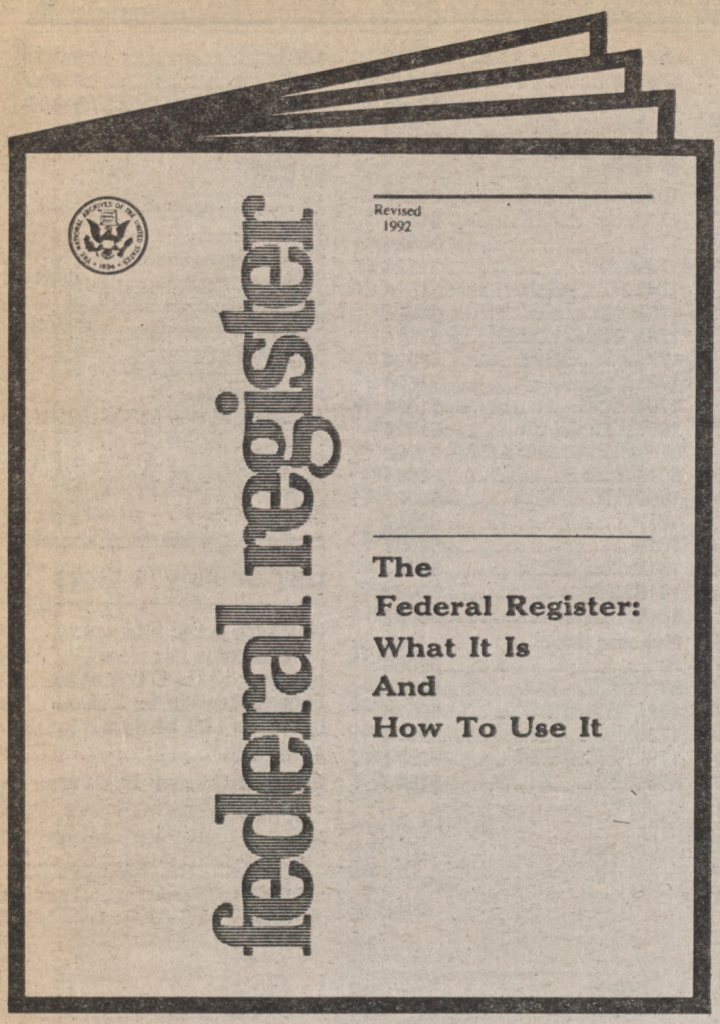
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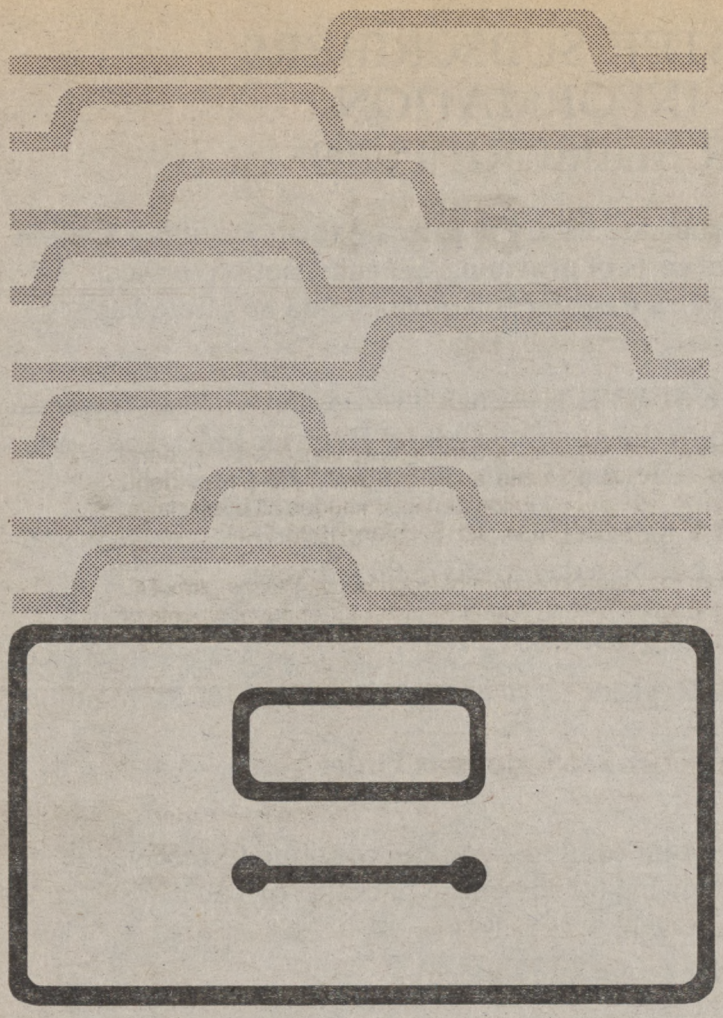
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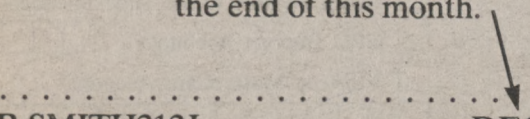
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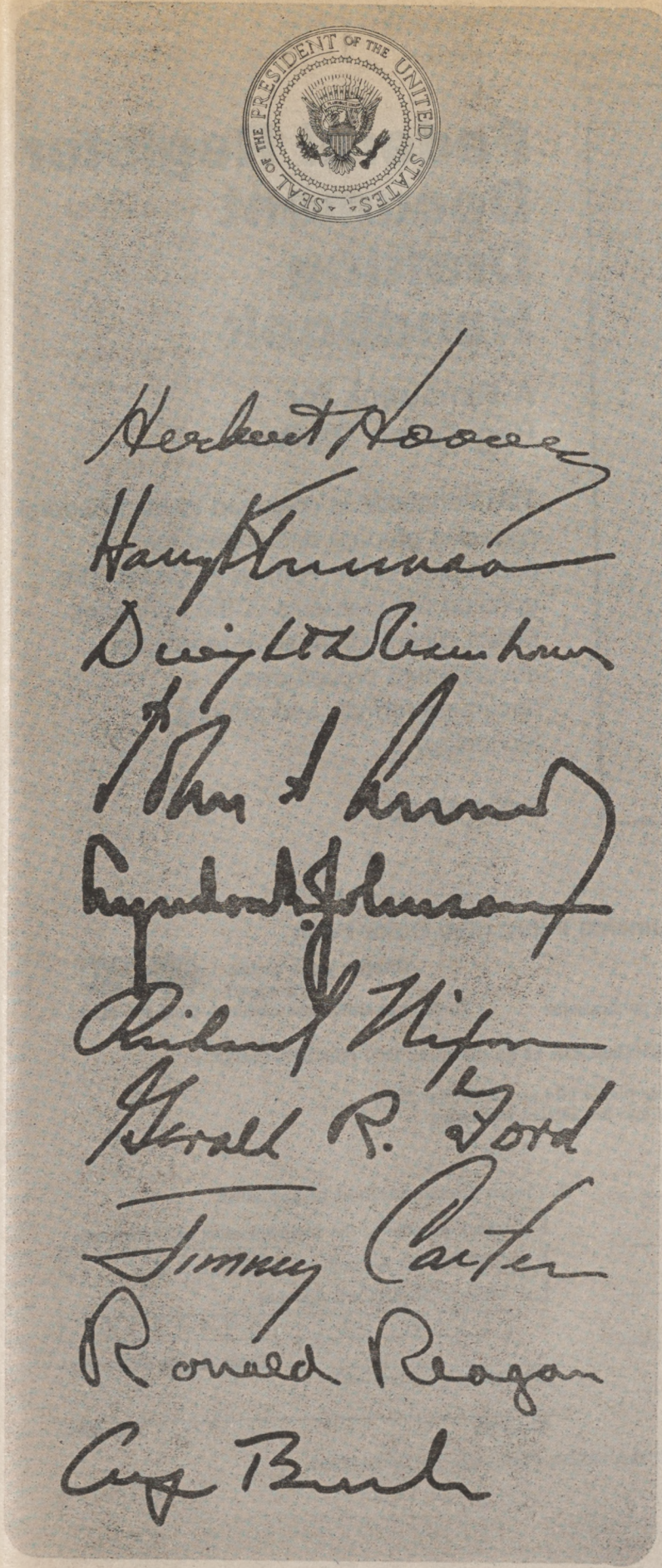
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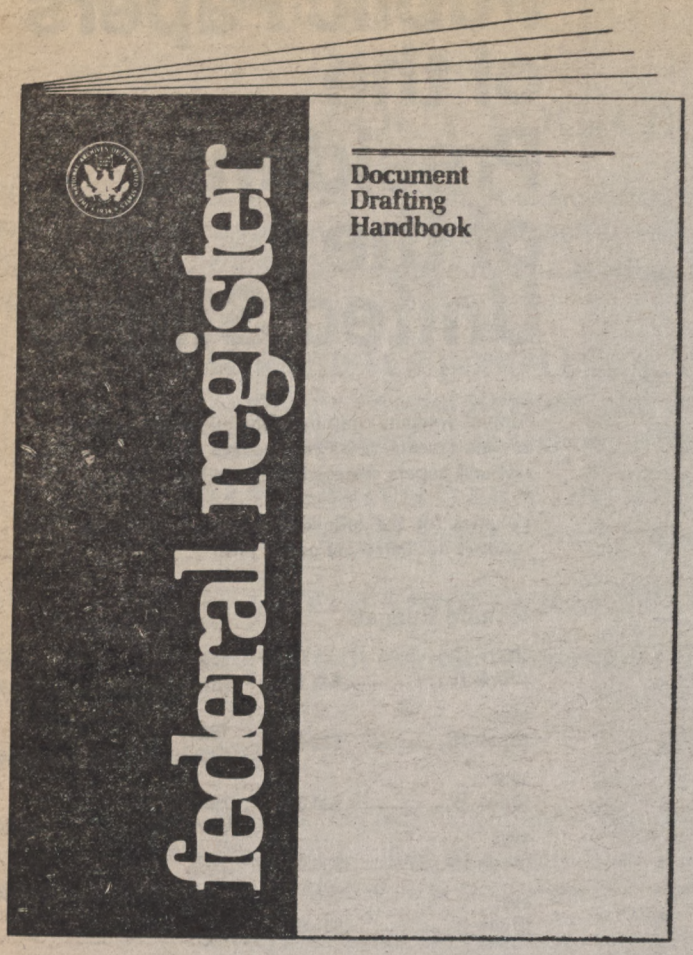
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