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**WHO:** The Office of the Federal Register.

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

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 58

[DA-92-18]

### Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Whipped Butter

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

**ACTION:** Final rule.

**SUMMARY:** This final rule promulgates new United States Standards for Grades of Whipped Butter. These standards establish quality criteria for grade determination and optional microbiological and keeping-quality tests for whipped butter.

The Department has determined that the grading of butter sold in consumer-size packages bearing USDA official identification (grade-label) should be conducted when the product is in the final package. Previously, the quality of whipped butter was evaluated prior to the whipping process using the U.S. Standards for Grades of Butter. The U.S. Standards for Grades of Whipped Butter change this procedure.

**EFFECTIVE DATE:** February 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** Diane D. Lewis, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, room 2750-S, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7473.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and this action will not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

In 1991, the Department evaluated the procedures used to assign U.S. grades to butter in consumer-size packages. The Department concluded that grading of the product should be conducted in the final package because the evaluation of whipped butter at that time is more accurate.

Previously, the procedure for evaluating grade-label whipped butter was to either grade the butter in the bulk form prior to whipping or obtain a sample of fresh butter taken during the manufacturing process and evaluate it. These methods are changed by this action because of the Department's decision to conduct grading in the final package. The new standards have received general support from many of the manufacturers of whipped butter who utilize the USDA grade-label program, as well as from the American Butter Institute. In addition, the standards were field-tested by the Dairy Grading Branch and found to be satisfactory.

In view of the need for new standards, the Department published on June 30, 1993 (58 FR 34937) proposed United States Standards for Whipped Butter. Except for minor format changes, the standards contained in this final rule are the same as those set forth in the proposal. The new standards establish the following.

**1. Provide Quality Specifications for Whipped Butter at Two U.S. Grade Levels: U.S. Grade AA and U.S. Grade A**

Whipped butter is produced by uniformly incorporating air or inert gas into butter to improve its spreadability characteristics. The percent overrun, based on buyer or consumer preference, is usually between 50 and 100 percent. Market analysis conducted during the development of these standards supports the opinion that consumers prefer the higher quality products. Therefore, standards are established for quality designations at two levels: U.S. Grade AA and U.S. Grade A.

**2. Define Flavor Characteristics**

Production and processing practices influence flavor characteristics in whipped butter. To manufacture whipped butter with a highly pleasing flavor, the raw milk and cream must be free of objectionable flavors. This final rule defines acceptable flavor characteristics to assist the graders in identifying and classifying the flavor.

**3. Define Body, Color, and Salt Characteristics and Establish Disratings**

Just as production and processing practices influence the flavor of whipped butter, they also influence body, color, and salt characteristics. This final rule describes distinguishing body, color, and salt characteristics and establishes disratings which are used to determine the U.S. grade.

**4. Illustrate How Flavor, Body, Color, and Salt Characteristics Influence Grade Determination**

These standards provide step-by-step instructions in determining the final grade of whipped butter. The U.S. grade of whipped butter is determined on the basis of classifying first the flavor characteristics. Then body, color, and salt characteristics are noted and disratings established. When total disratings exceed the permitted amount identified in the standards, the final U.S. grade is lowered.

**5. Establish Optional Microbiological and Keeping-Quality Tests (Not Mandatory for Grade Designation)**

Since 1975, the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service have required microbiological and keeping-quality testing of whipped butter bearing USDA official identification. The market analysis conducted during the development of these standards revealed that the industry utilized tighter microbiological specifications for proteolytic and yeast and mold counts than those listed in the "General Specifications". To be more aligned with current industry standards, this

final rule tightens these microbiological requirements. This final rule also incorporates these same tests as optional tests (not mandatory for grade designation) in the United States Standards for Grades of Whipped Butter.

This final rule also makes corollary changes in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (subpart B of 7 CFR part 58) to conform the definition and grade designations of whipped butter set forth therein with the new United States Standards for Grades of Whipped Butter (in subpart G of 7 CFR part 58).

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When whipped butter is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. This action makes minor format changes for purposes of clarity to Tables I and III to the format that appeared in the proposed rule.

**Public Comments**

On June 30, 1993, the Department published a proposed rule (58 FR 34937) to promulgate the United States Standards for Whipped Butter. The public comment period closed August 30, 1993. No comments were received during this time.

**List of Subjects in 7 CFR Part 58**

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

## PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

**Authority:** Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.305 (f) is revised to read as follows:

**§ 58.305 Meaning of words.**

* * * * *

(f) *Whipped butter.* The food product is made by the uniform incorporation of air or inert gas into butter.

**§ 58.323 [Removed and Reserved].**

3. In subpart B, § 58.323 is removed and reserved.

4. In subpart B, § 58.346 is revised to read as follows:

**§ 58.346 Whipped butter.**

(a) The quality requirements for whipped butter shall be in accordance with the U.S. Standards for Grades of Whipped Butter for U.S. Grade AA and U.S. Grade A, respectively.

(b) Whipped butter shall also be subject to the following specifications when sampled and tested in accordance with § 58.336 and § 58.337, respectively:

(1) Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 70°F.

(2) Optional except when required or requested: Copper content, not more than 0.3 ppm; iron content, not more than 1.0 ppm; enterococci, not more than 10 per gram.

5. A new Subpart G—United States Standards for Grades of Whipped Butter is added to read as follows:

**Subpart G—United States Standards for Grades of Whipped Butter**

**Definitions**

Sec.
58.2425 Whipped butter.
58.2426 Butter.
58.2427 Cream.

**U.S. Grades**

58.2428 Nomenclature of U.S. grades.
58.2429 Basis for determination of U.S. grade.
58.2430 Specifications for U.S. grades.
58.2431 Relationship of U.S. grade of whipped butter to the flavor classifications as affected by disratings in body, color, and salt characteristics.
58.2432 Optional tests.
58.2433 U.S. grade not assignable.
58.2434 Test methods.

**Explanation of Terms**

58.2435 Explanation of terms.

**Subpart G—United States Standards for Grades of Whipped Butter [1]**

**Definitions**

**§ 58.2425 Whipped butter.**

*Whipped butter* is the food product made by the uniform incorporation of air or inert gas into butter.

**§ 58.2426 Butter.**

The food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, with or without additional coloring matter, and containing not less than 80 percent by weight of milkfat, all tolerances having been allowed for.

**§ 58.2427 Cream.**

The term *cream* when used in this subpart G means cream separated from milk produced by healthy cows. The cream shall be pasteurized at a temperature of not less than 165°F and held continuously in a vat at such temperature for not less than 30 minutes; or pasteurized at a temperature of not less than 185°F for not less than 15 seconds; or pasteurized by other approved methods giving equivalent results.

**U.S. Grades**

**§ 58.2428 Nomenclature of U.S. grades.**

The nomenclature of U.S. grades is as follows:

(a) U.S. Grade AA.

(b) U.S. Grade A.

**§ 58.2429 Basis for determination of U.S. grade.**

The U.S. grade of whipped butter is determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color, and salt of a representative sample. Flavor is the basic quality factor in grading whipped butter and is determined organoleptically by smell and taste. The flavor characteristic and intensity is identified and rated according to the applicable classification contained in Table I in § 58.2430. When more than one flavor characteristic is discernible in a sample of whipped butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating. Body, color, and salt characteristics are then noted and disratings are made in accordance with the established classification in Table II in § 58.2430. The final U.S. grade for the sample is then established in accordance with the

[1] Compliance with these standards does not excuse failure to comply with provisions of the Federal Food, Drug and Cosmetic Act.

flavor classification, subject to permitted disratings for body, color, and salt as outlined in § 58.2431.

**§ 58.2430 Specifications for U.S. grades.**

The specifications for the U.S. grades of whipped butter are as follows:

(a) *U.S. Grade AA.* U.S. Grade AA whipped butter conforms to the following: Shall possess a fine and highly pleasing butter flavor. Whipped butter may also have a lactic culture flavor. May possess a slight feed, or a definite cooked flavor. The permitted disratings in body, color, and salt characteristics are limited to one-half (½). For detailed specifications and classification of flavor characteristics, see Table I of this section. For body, color, and salt disratings, see Table II of this section.

(b) *U.S. Grade A.* U.S. Grade A whipped butter conforms to the following: Shall possess a pleasing and desirable butter flavor. Whipped butter may also have a lactic culture flavor. May possess to a slight degree the following flavors: acid, aged, bitter, coarse, flat, smothered, and storage. May possess a definite feed flavor. The permitted disratings in body, color, and salt characteristics are limited to one-half (½). For detailed specifications and classification of flavor characteristics, see Table I of this section. For body, color, and salt disratings, see Table II of this section.

(c) *General.* Whipped butter of all U.S. grades shall be free from foreign materials and visible mold. When total disratings exceed the permitted amount, the final U.S. grade shall be lowered one grade level for each additional one-half (½) disrating.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

| Flavor characteristics [1] | U.S. grade designation | |
|---|---|---|
| | AA | A |
| Acid | — | S |
| Aged | — | S |
| Bitter | — | S |
| Coarse | — | S |
| Cooked | D | |
| Feed | S | D |
| Flat | — | S |
| Smothered | — | S |
| Storage | — | S |

[1] When more than one flavor is discernible in a sample of whipped butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating.

(—) = Not Permitted
S = Slight
D = Definite

TABLE II.—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR AND SALT

| Characteristics | Disratings | |
|---|---|---|
| | Slight | Definite |
| Body: | | |
| Free moisture | ½ | 1 |
| Mealy or grainy | ½ | 1 |
| Color: | | |
| Color specks | 1 | 1½ |
| Mottled | ½ | 1 |
| Wavy | ½ | 1 |
| Salt: | | |
| Gritty | 1 | 1½ |
| Sharp | 1 | 1½ |

**§ 58.2431 Relationship of U.S. grade of whipped butter to the flavor classifications as affected by disratings in body, color, and salt characteristics.**

When the disratings for body, color, and salt exceed the permitted amount of (½) for any flavor classification, the final U.S. grade shall be lowered accordingly:

TABLE III

| Flavor classification | Total disratings | U.S. grade |
|---|---|---|
| AA | ½ | AA |
| AA | 1 | A |
| AA | 1½ | (*) |
| A | ½ | A |
| A | 1 | (*) |

(*)=No U.S. grade assigned.

**§ 58.2432 Optional tests.**

(a) There are optional tests (not mandatory for grade designation) that may be made on whipped butter that can be requested by the buyer or seller. If requested, the product must comply with the microbiological and keeping-quality specifications as follows:

Proteolytic count—not more than 50 per gram
Yeast and mold count—not more than 10 per gram
Coliform count—not more than 10 per gram
Keeping-quality test—satisfactory after 7 days at 70 °F.

(b) All required tests, and optional tests when specified, shall be performed in accordance with the test methods identified in § 58.2434.

**§ 58.2433 U.S. grade not assignable.**

Whipped butter shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The butter fails to meet or exceed the requirements for U.S. Grade A.

(b) The butter, when tested, does not comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or the minimum milkfat requirements of 80.0 percent.

(c) The butter is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

**§ 58.2434 Test methods.**

Testing methods contained in the latest edition of the "Standard Methods for the Examination of Dairy Products" or the "Official Methods of Analysis of the Association of Official Analytical Chemists" are used to determine bacterial estimates and milkfat content.

**Explanation of Terms**

**§ 58.2435 Explanation of terms.**

(a) With respect to flavor intensity and characteristics:

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Acid.* Lacks a delicate flavor or aroma and is associated with an acid condition but there is no indication of sourness.

(4) *Aged.* Characterized by lack of freshness.

(5) *Bitter.* Astringent, similar to taste of quinine and produces a puckery sensation.

(6) *Coarse.* Lacks a fine, delicate, smooth flavor.

(7) *Cooked.* Smooth, nutty-like characteristic resembling a custard flavor.

(8) *Feed.* Aromatic flavor characteristic of the feed eaten by cows.

(9) *Flat.* Lacks natural butter flavor.

(10) *Smothered.* Suggestive of improperly cooked cream.

(11) *Storage.* Characterized by a lack of freshness and more intensified than "aged" flavor.

(b) With respect to body:

(1) *Free moisture.* "Free moisture" is present when beads of moisture are visible on the surface of the sample. The intensity is described as "slight" when the droplets or beads of moisture are barely visible, few in number, and about the size of a pinhead; and "definite" when the moisture droplets are clearly visible, more numerous, and are somewhat larger in size.

(2) *Mealy or grainy.* A "mealy" or "grainy" condition imparts a granular consistency when the whipped butter is melted on the tongue. The intensity is described as "slight" when the mealiness or graininess is barely detectable; and "definite" when the mealiness or graininess is clearly detectable.

(c) With respect to color:

(1) *Mottled.* "Mottled" appears as a dappled condition with spots of lighter

and deeper shades of yellow. The intensity is described as "slight" when the small spots of different shades of yellow, irregular in shape, are barely discernible on the sample of whipped butter; and "definite" when the mottles are more clearly discernible.

(2) *Color specks.* "Specks" usually appear in whipped butter as small white or yellow spots. The intensity is described as "slight" when the spots are few in number; and "definite" when they are noticeable in larger numbers.

(3) *Wavy.* "Wavy" color in whipped butter is an unevenness in the color that appears as waves of different shades of yellow. The intensity is described as "slight" when the waves are barely discernible; and "definite" when they are readily noticeable.

(d) With respect to salt:

(1) *Gritty.* A "gritty" salt condition imparts a sand-like feeling on the tongue due to grains of undissolved salt. The intensity is described as "slight" when only a few grains of undissolved salt are detected; and "definite" when the condition is more readily noticeable.

(2) *Sharp.* "Sharp" salt is characterized by taste sensations suggestive of salt. The intensity is described as "slight" when the salt taste predominates in flavor; and "definite" when the taste distinctly predominates in flavor.

Dated: January 3, 1994.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 94–425 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Parts 906 and 928**

**[Docket Nos. FV93-906-1, Amendment 1; and FV93-928-2, Amendment 1]**

## Finalization of Interim Final Rules for Specified Marketing Orders (Oranges, Grapefruit, and Papayas)

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rules that authorized expenses and established assessment rates for the Texas Valley Citrus Committee and the Papaya Administrative Committee (Committees) under Marketing Order Nos. 906 and 928, respectively. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

**EFFECTIVE DATE:** Section 906.233 is effective August 1, 1993, through July 31, 1994; § 928.233 is effective July 1, 1993, through June 30, 1994.

**FOR FURTHER INFORMATION CONTACT:** Britthany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090-6456; telephone: (202) 720-5127; Belinda Garza (§ 906.233), McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501, telephone: (512) 682-2833; or Kurt J. Kimmel (§ 928.233), California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721, telephone: (209) 487-5901.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Marketing Order No. 906 [7 CFR part 906] regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas; and Marketing Agreement and Marketing Order No. 928, as amended [7 CFR part 928] regulating the handling of papayas grown in Hawaii. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas and papayas grown in Hawaii are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable oranges, grapefruit, and papayas handled during the 1993-94 fiscal year, beginning August 1, 1993, through July 31, 1994 (M.O. 906), and July 1, 1993, through June 30, 1994 (M.O. 928). This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 handlers of oranges and grapefruit, and 120 handlers of papayas subject to regulation under their respective marketing orders each season. In addition, there are approximately 2,500 orange and grapefruit producers in Texas, and 300 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the orange, grapefruit, and papaya producers and handlers may be classified as small entities.

The respective marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable oranges, grapefruit, and papayas handled from the beginning of such year. An annual budget of expenses is prepared by each Committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected

persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, and papayas. Because these rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

An interim final rule was issued for the Texas Valley Citrus Committee (TVCC), on July 7, 1993, and published in the **Federal Register** [58 FR 37635, July 13, 1993] effective for the period August 1, 1993, through July 31, 1994, with a 30-day comment period ending August 12, 1993. The interim final rule authorized expenses of $984,319 and an assessment rate of $0.15 per 7/10 bushel carton for the 1993–94 fiscal year. No comments were filed on the expenses and assessment rate in the interim final rule.

The TVCC met again on August 3, 1993, and unanimously recommended increasing authorized expenses to $1,180,925, a $196,606 increase from the previously authorized amount. The TVCC also unanimously recommended increasing the assessment rate from $0.15 per 7/10 bushel carton to $0.18 per 7/10 bushel carton, a $0.03 increase per 7/10 bushel carton from the previously established assessment rate.

An amended interim final rule was issued on October 7, 1993, and published in the **Federal Register** [58 FR 53111, October 14, 1993] effective for the period August 1, 1993 through July 31, 1994, and provided a 30-day comment period. This amended interim final rule increased authorized expenses to $1,180,925, and increased the assessment rate to $0.18 per 7/10 bushel carton of assessable oranges and grapefruit for the 1993–94 fiscal year under the order. The $196,606 expense increase is necessary to provide additional funds for order operations, including $172,606 to fund increased administrative and compliance expenses, primarily for the maintenance of road guard stations, and $24,000 to cover a shortfall in the Mexican Fruit Fly support program. The increase in the assessment rate along with the withdrawal of additional funds from the TVCC's reserves, will adequately fund the increased expenses.

An amended interim final rule was issued for the Papaya Administrative Committee (PAC), on June 14, 1993, and published in the **Federal Register** [58 FR 33759, June 21, 1993] effective for the period July 1, 1993, through June 30, 1994, with a 30-day comment period ending July 21, 1993. The interim final rule authorized expenses of $700,580 and an assessment rate of $0.0085 per pound of fresh papayas for the 1993–94 fiscal year. No comments were filed on the expenses and assessment rate in the interim final rule.

However, the PAC met again on August 13, 1993, and unanimously recommended decreasing authorized expenses from $700,580 to $597,860, a $102,720 decrease in expenses from the authorized amount. The PAC also unanimously recommended decreasing the assessment rate from $0.0085 to $0.0069, a $0.0016 decrease in the assessment rate, based upon 58 million pounds of fresh papayas, from the previously established assessment rate.

An amended interim final rule was issued on October 7, 1993, and published in the **Federal Register** [58 FR 53117, October 14, 1993] effective for the period July 1, 1993, through June 30, 1994, and provided a 30-day comment period. This amended interim final rule decreased authorized expenses to $597,860, and reduced the assessment rate to $0.0069 per pound of fresh papayas for the 1993–94 fiscal year under the order. Program income for the PAC decreased from $701,660 to $599,356, a $102,304 decrease from the previous estimate. Major program income reductions come from a $92,800 decrease in assessment income due to the lower assessment rate and a $9,504 reduction in income from the Department's Foreign Agricultural Service.

The $102,720 decrease in expenses results from reductions in a number of expense items. Major expense reductions include expenditures for salaries and wages, office rent, auto expenses, and Japanese advertising and promotion. The projected income over expenses has increased from $1,080 to $1,496, a $416 increase from the previous amount. The excess funds will be added to the PAC's operational reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The amended interim final rules were published in the **Federal Register** [58 FR 53111 October 14, 1993], for 7 CFR part 906, and [58 FR 53117, October 14, 1993], for 7 CFR part 928. Each interim final rule provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553]. The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal years for the programs began on August 1, 1993, for Texas citrus and July 1, 1993, for Hawaii papayas. The marketing orders require that the rates of assessment for the fiscal year apply to all assessable oranges, grapefruit, and papayas handled during the fiscal years. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules. No comments were received concerning the two interim final rules that are adopted in this action as final rules without change.

**List of Subjects**

*7 CFR Part 906*

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

*7 CFR Part 928*

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 906 and 928 are hereby amended as follows:

1. The authority citation for 7 CFR parts 906 and 928 continue to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

2. For the reasons set forth in the preamble, the interim final rule revising § 906.233 which was published at 58 FR 53111, is adopted as a final rule without change.

## PART 928—PAPAYAS GROWN IN HAWAII

3. For the reasons set forth in the preamble, the interim final rule revising § 928.233 which was published at 58 FR 53117, is adopted as a final rule without change.

Dated: January 3, 1994.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–421 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Parts 907 and 908

[FV93–907–4IFR]

## Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Suspension of Form 8 and Form 3

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

**ACTION:** Interim final rule; suspension.

**SUMMARY:** This rule invites comments on changes to the reporting requirements currently prescribed under the California-Arizona navel and Valencia orange marketing orders. This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment), and will reduce the burden of information collection requirements currently provided for under the marketing orders.

**DATES:** Effective Date: January 10, 1994.

Comments received by February 9, 1994, will be considered prior to issuance of a final action.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

**SUPPLEMENTARY INFORMATION:** This document is issued under Marketing Order Nos. 907 and 908 [7 CFR parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 140 handlers of navel oranges and 125 handlers of Valencia oranges who are subject to regulation under the respective marketing order and approximately 3,750 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California-Arizona navel and Valencia oranges may be classified as small entities.

This rule invites comments on two changes to the reporting requirements currently prescribed under the California-Arizona orange marketing orders. This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment). These changes were unanimously recommended by the committees.

Currently, sections 907.58 and 908.58 of the navel and Valencia orange marketing orders specify that, for the handling of oranges other than by rail car (primarily truck shipments), handlers issue to the consignee an assignment of allotment certificate covering each quantity of oranges so handled. Sections 907.112 and 908.112 of the orders' rules and regulations require handlers to submit such information on Form 8. Handlers are also required to segregate the information on Form 8 by size of oranges shipped and destination (i.e., U.S. and Alaska or Canada).

Since the inception of the orders, the committees have utilized Form 8 primarily for tracking and verifying truck shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended [58 FR 53,114; October 14, 1993], the committees believe that continued submission of Form 8 creates an additional burden on handlers that is unnecessary.

According to the committees, many handlers have long questioned the value of Form 8 (commonly referred to in the industry as "the daily truck ticket") during periods of no volume regulation. Shipment information from Form 8 is transferred to Form 4 (Weekly Report). Handlers maintain their own manifest records of these shipments and, without weekly volume regulation, Form 4 provides similar data with the exception of number of cartons shipped by size. The committees plan on requesting size information from handlers as needed on

a voluntary basis and anticipate revising the weekly Form 4 at a later time to provide for the collection of size information.

Thus, the committees believe that continued submission of Form 8, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending sections 907.58 and 908.58 of the orders and §§ 907.112 and 908.112 of the orders' rules and regulations so that Form 8 will be discontinued.

The second change that the committees recommended concerns Form 3 (Daily Manifest Report of Oranges Subject to Allotment). Currently, sections 907.71 and 908.71 of the orange orders provide that handlers furnish to the committees information regarding cartons of oranges handled, segregated by size, within 24 hours of shipment. Handlers must also indicate whether the shipments were destined to points in the U.S. and Alaska or Canada. Sections 907.141 and 908.141 of the orders' rules and regulations require handlers to submit this information for rail car shipments on Form 3.

The information collected on Form 3 is similar to the information collected on Form 8 described earlier, but pertains to rail car shipments rather than truck shipments. Again, this information has historically been utilized primarily for tracking and verifying shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended, the committees believe that continued submission of Form 3, like Form 8, creates an additional burden on handlers that is unnecessary. Handlers are also required to submit similar information on rail car shipments on the weekly Form 4. As with size information pertaining to truck shipments, the committees plan on requesting size information from handlers for rail car shipments on a voluntary basis until the weekly Form 4 is appropriately revised.

Like Form 8, the committees believe that continued submission of Form 3, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending §§ 907.71 and 908.71 of the orders and §§ 907.141 and 908.141 of the orders' rules and regulations so that Form 3 will be discontinued.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges. This rule will reduce the reporting burden on approximately 265 handlers of navel and Valencia oranges who have been completing Form 8, taking about .40 hour to complete each report. This rule will also reduce the reporting burden on about 80 orange handlers who ship by rail at some point during a season and utilize Form 3, taking about 0.20 hours to complete each report.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that the provisions detailed below, at this time, do not tend to effectuate the declared policy of the Act.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this action into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping navel oranges and these actions will reduce the burden of information collection placed on such handlers; (2) the committees unanimously recommended these actions at public meetings and all interested persons had an opportunity to provide input; (3) these actions relax reporting requirements; (4) California-Arizona orange handlers are aware of this action and need no additional time to comply with the relaxed requirements; and (5) this action provides a 30-day comment period and any comments received will be considered prior to finalization of this action.

**List of Subjects in 7 CFR Parts 907 and 908**

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

## PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Sections 907.58, 907.71, 907.112, and 907.141 are suspended in their entirety.

## PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

3. Sections 908.58, 908.71, 908.112, and 908.141 are suspended in their entirety.

Dated: January 3, 1994.

**Patricia Jensen,**

*Acting Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 94–428 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 910

**[FV93–910–3 FIR]**

## Lemons Grown in California and Arizona; Increase in the Organic Exemption Provision

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

**ACTION:** Final rule.

**SUMMARY:** This document finalizes without change an interim final rule that amended the rules and regulations established under the marketing order covering California-Arizona lemons to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations. The marketing order regulates the handling of lemons grown in California and Arizona and is administered locally by the Lemon Administrative Committee (Committee). This final rule recognizes additional opportunity to market organic lemons to organic or health food wholesalers and retailers.

**EFFECTIVE DATE:** February 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** Kellee J. Hopper, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901; or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–5127.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." This order is

effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,000 producers of lemons in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Section 910.80 of the order authorizes the Committee, with the approval of the Secretary, to establish minimum quantities and types of shipments which shall be free from regulation under this order. Section 910.180(d)(3) of the administrative rules and regulations prescribes procedures governing exemption from volume and size regulations for organic lemons handled in minimum quantities.

On July 23, 1993, Mr. Rich Hart, President of Rainbow Valley Orchards, sent a letter to the Committee requesting an increase in the amount of organic lemons a handler may ship free of order regulations to 500 cartons per week. Currently, handlers can ship up to 350 cartons of such lemons weekly. At its August 3, 1993, meeting, the Committee recommended increasing the organic exemption provision from 350 to 500 cartons per week that handlers may ship to organic or health food wholesalers and retailers without regard to volume and size regulations. The vote on the recommendation was 12 in favor and 1 abstention. The person who abstained expressed a concern with the definition of organic.

Shippers of organic lemons have indicated that organic fruit markets can absorb more fruit than in the past, and that they need to take advantage of the additional marketing opportunity. The Committee expects the increase in shipments allowed will provide shipping flexibility for organic shippers and will facilitate the marketing of organic lemons. The Committee also believes that sales of organic lemons will not adversely impact sales of regulated lemons.

The interim final rule was issued on October 4, 1993, with an effective date of October 8, 1993, and published in the **Federal Register** [58 FR 52401, October 8, 1993]. The interim final rule provided a 30-day comment period ending November 8, 1993, and no comments were received.

The interim final rule amended the rules and regulations of the lemon marketing order. This rule modifies language in the order's rules and regulations to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship free of order regulations.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0120.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 910**

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

2. Accordingly, the interim final rule amending § 910.180, which was published in the **Federal Register** [58 FR 52401, October 8, 1993], is adopted as a final rule without change.

Dated: January 3, 1994.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–422 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Parts 932 and 944**

**[Docket Nos. FV93–932–1FIR and FV93–944–1FIR]**

## Olives Grown in California and Imported Olives; Finalize the Establishment of Limited Use Olive Requirements During the 1993–94 Crop Year

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorizes the use of smaller sized olives in the production of limited use styles for California olives. This rule is effective during the 1993–94 crop year and establishes minimum grade and size requirements for such olives in the order's rules and regulations. This final rule also adopts, without change, the provisions of an interim final rule that authorizes the importation of certain bulk olives into the United States to be

used in the production of limited use styles of olives such as wedges, halves, slices, or segments. This action is intended to allow more olives into fresh market channels and is consistent with current market requirements. This action also updates the Federal-State inspection office address list contained in the import regulation.

**EFFECTIVE DATE:** February 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–5127, or Terry Vawter, California Marketing Field Office, Fruit and Vegetable division, AMS, USDA, 2202 Monterey Street, suite 102–B, Fresno, CA 93721, telephone (209) 487–5901.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under the Federal marketing orders.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 5 handlers of California olives that will be subject to regulation under the order during the current season, and there are about 1,350 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those whose annual receipts are less than $500,000, and small agricultural service firms, have been defined by the Small Business Administration as those having annual receipts of less than $3,500,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

This rule finalizes an interim final rule that establishes grade and size requirements for olives grown in California, which are authorized for limited use styles. The interim final rule was published in the September 17, 1993, **Federal Register** [58 FR 48592], and provided 30 days to interested persons to file comments. No comments were received.

This rule also finalizes an interim final rule that authorizes the importation of smaller sized olives for limited uses. The interim final rule was published in the September 17, 1993, **Federal Register** [58 FR 48595], and provided 30 days for interested persons to file comments. No comments were received.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 168,500 tons during the 1992–93 crop year. The California Olive Committee (committee) indicated that 1991–92 production totalled about 63,260 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Total production for the 1992–93 crop year is approximately 163,500 tons. Total production for the 1993–94 crop year is estimated to be 110,000 tons. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1993–94 crop year to meet market requirements for limited use styles of canned olives for the 1993–94 year. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the

Secretary. The sizes authorized herein are the same as those established for the 1992–93 crop year. The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of through less profitable non-canning uses such as crushing for oil. Returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was instituted in 1965.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet market needs for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been able to increase production to meet market needs for canned ripe olives.

The committee conducted a study during the 1990–91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study. All handlers reported that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

This action will help growers and handlers to meet the growing market requirements for limited use style olives based upon current conditions. The size requirements allow the use of sizes which would otherwise have to be disposed of for non-canning use. In turn, growers should receive a larger return from such olives.

By a mail ballot vote ending June 15, 1993, the committee unanimously recommended establishment of grade and size regulations during the 1993–94 crop year pursuant to paragraph (a)(3) of § 932.52 of the order. The grade requirements are the same as established in recent seasons. The specific sizes for the variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles allowed handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supplies and facilitate market expansion, thereby increasing returns to growers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable, non-canning uses.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This final rule modifies paragraph (b)(12) of the olive import regulation (7 CFR 944.401 (b)(12)) to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles for the 1993–94 season which begins August 1, 1993. This rule also establishes size regulations for such olives in paragraph (b)(12).

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the committee to change the requirements for olives for limited use styles grown in California. The committee works with the Department in administering the marketing order program for California olives.

Paragraph (a)(3) of § 932.52 of the California olive marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles.

The committee unanimously recommended to authorize establishment of minimum sizes for use in the production of limited use styles during the 1993–94 season. These minimum sizes would be the same as those established for the 1992–93 season. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes are as follows:

Variety Group I, except the Ascolano, Barouni, or St. Agostino varieties—1/105 pound

Variety Group I of the Ascolano, Barouni, or St. Agostino varieties—1/180 pound

Variety Group 2, except the Obliza variety—1/205 pound

Variety Group 2 of the Obliza variety—1/180 pound

Olives not identifiable as to variety or variety group—1/205 pound

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

This action is necessary because section 8e of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing size regulations for such olives requires that the same or comparable regulations be issued for imported bulk olives.

Permitting the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of through less profitable, non-canning uses under the supervision of the inspection service or exported.

A change in paragraph (c) to be implemented indefinitely, updates the list of regional inspection offices listed in the import regulation. The change reflects consolidation of the Southeastern and Central offices into the Eastern Regional Office and the relocation of the Western Regional Office.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rules, without change, as published in the **Federal Register** [FR 58 48592 and 48595], will tend to effectuate the declared policy of the Act.

**List of Subjects**

*7 CFR Part 932*

Marketing agreements, Olives, Reporting and recordkeeping requirements.

**List of Subjects**

*7 CFR Part 944*

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, and Oranges.

For the reasons set forth in the preamble 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 932 and 944 are revised to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 932—OLIVES GROWN IN CALIFORNIA

2. Accordingly, the interim final rule revising the provisions of § 932.153, which was published in the September 17, 1993, **Federal Register** [58 FR 48592], is adopted as a final rule without change.

## PART 944—FRUITS; IMPORT REGULATIONS

3. Accordingly, the interim final rule amending the provisions of § 944.401, which was published in the September 17, 1993, **Federal Register** [58 FR 48595], is adopted as a final rule without change.

Dated: January 3, 1994.

**Robert C. Keeney,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–429 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 1106

**[DA–94–03]**

## Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

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

**ACTION:** Suspension of rule.

**SUMMARY:** This document suspends indefinitely certain portions of a provision of the Southwest Plains Federal milk marketing order (Order 106), beginning on the date this document is published in the **Federal Register**. The suspension will allow transfers of Class I fluid milk products from a distributing plant to other plants regulated under Order 106 to be counted as part of the distributing plant's route sales for the purpose of determining the plant's pool status under the order. The suspension was requested by Associated Milk Producers, Inc. (AMPI), and Mid-America Dairymen, Inc. (Mid-America), who stated that it was necessary to restore equity among producers supplying handlers regulated under Order 106.

**EFFECTIVE DATE:** January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding: Notice of Proposed Suspension: Issued November 23, 1993; published November 30, 1993 (58 FR 63120).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this final rule would not have a significant economic impact on a substantial number of small entities. This suspension will lessen the opportunity for disorderly marketing conditions and will tend to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Notice of proposed rulemaking was published in the **Federal Register** on November 30, 1993 (58 FR 63120), concerning the proposed suspension of certain words from the route disposition definition of Order 106. The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by December 7, 1993. One comment letter was received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provision of the order regulating the handling of milk in the Southwest Plains marketing area will not tend to effectuate the declared policy of the Act for an indefinite period commencing with the publication of this document in the **Federal Register**:

In § 1106.3, the parenthetical phrase "(except to a plant)".

**Statement of Consideration**

This document will suspend certain words from the route disposition definition of the order. The effect of this change will be to include transfers of fluid milk products to other plants regulated under Order 106 in determining if the transferor plant meets the pool qualification requirements specified in § 1106.7(a) of the order.

According to Mid-America and AMPI, two cooperative associations representing a substantial number of producers whose milk is pooled under Order 106, a Tulsa, Oklahoma, handler receiving milk from non-member producers is also supplied supplemental milk from cooperative associations that pool milk on the Southwest Plains milk order. The proponents argued that as a result of excluding transfers of fluid milk products to other plants regulated under Order 106, the handler has been a partially regulated plant in recent months and could be again in the future. Mid-America and AMPI explained that, since the handler's Class I utilization is higher than the market's average, the handler has been able to pay its non-member producers a price in excess of the order's blend price. In addition to the inequity resulting from this price disparity, AMPI, during the month of September, was required to depool milk that it had diverted from the Tulsa plant because the plant otherwise would have failed to qualify as a pool plant during the month of September. This resulted in additional financial loss to the cooperative.

A letter supporting the suspension was filed on behalf of the proponents. There were no comment letters received in opposition to the suspension.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties, and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

**List of Subjects in 7 CFR Part 1106**

Milk marketing orders.

For the reasons set forth in the preamble, title 7, part 1106 is amended as follows:

## PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR part 1106, continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

**§ 1106.3 [Suspended]**

2. In § 1106.3 the phrase "(except to a plant)" is suspended.

Dated: January 3, 1994.

**Patricia Jensen,**

*Acting Assistant Secretary.*

[FR Doc. 94–420 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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## Commodity Credit Corporation

## 7 CFR Part 1464

**RIN 0560–AD53**

## Tobacco; Importer Assessments: Effective Date

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Correction; interim rule; effective date.

**SUMMARY:** This document contains a correction to the interim rule concerning tobacco importer assessments, which was published on Thursday, December 23, 1993, at 58 FR 68017. The effective date was inadvertently omitted from the interim rule. This document establishes an effective date of January 1, 1994, for the interim rule.

**EFFECTIVE DATE:** The effective date for the interim rule published at 58 FR 68017 is January 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Gary W. Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–0215, telephone 202–720–7562.

Signed in Washington, DC, on January 4, 1994.

**Grant Buntrock,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 94–448 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–05–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Social Security Administration

## 20 CFR Parts 404 and 416

**[Regulations No. 4 and 16]**

**RIN 0960–AB00**

## Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Correction to final rules.

**SUMMARY:** This document contains corrections to the final rules published Thursday, October 7, 1993 (58 FR 52346). The rules revised the criteria in the Listing of Impairments (the listings) that we use to evaluate respiratory impairments for adults and children who claim Social Security benefits or supplemental security income payments based on disability under titles II and XVI of the Social Security Act.

**EFFECTIVE DATE:** October 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Sandy Bond, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794.

**SUPPLEMENTARY INFORMATION:**

**Background**

The final rules that are the subject of these corrections revised the respiratory listings to reflect advances in medical knowledge, treatment, and methods of evaluating respiratory impairments.

The final rules, as published, contain a number of errors and omissions in several tables and cross-references which require correction.

Accordingly, the publication on October 7, 1993, of the final rules, which were the subject of FR Doc. 93–24238, is corrected as follows:

**Appendix 1 [Amended]**

1. On page 52361, in the first column, in listing 3.00E, the first sentence after the introductory text is corrected by adding the words "and paragraph A of 3.04" after the words "paragraph A and B of 3.02".

2. On page 52361, in the third column, in listing 3.00E, the first sentence of the last paragraph is corrected by adding the words "and 3.04" after the words "in 3.02".

3. On page 52364, in the second column, in listing 3.04C., in table IV, the last entry in the second column, "71 or less", is corrected to read "71 or more".

Dated: December 21, 1993.

**Neil J. Stillman,**

*Deputy Assistant Secretary for Information Resources Management.*

[FR Doc. 94–221 Filed 1–7–94; 8:45 am]

BILLING CODE 4190–29–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–4823–6]**

## South Dakota; Final Authorization of State Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Immediate final rule.

**SUMMARY:** The State of South Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed South Dakota's application and has made a decision, subject to public review and comment, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve South Dakota's hazardous waste program revisions. South Dakota's application for program revision is available for public review and comment.

**DATES:** Final authorization for South Dakota shall be effective March 11, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on South Dakota's program revision application must be received by the close of business February 9, 1994.

**ADDRESSES:** Copies of South Dakota's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Environmental Regulation, Department of Water and Natural Resources, Office of Waste Management, 319 S. Coteau, Pierre, South Dakota 57501, phone: 605/773–3153 and U.S. EPA Region VIII Library, 999 18th Street, suite 144, Denver, CO 80204–2466, Phone 303/293–1444. Written comments should be sent to: Marcella DeVargas (HWM–WM), U.S. Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202–2466, Phone 303/293-1670.

**FOR FURTHER INFORMATION CONTACT:** Marcella DeVargas, Waste Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202–2466, Phone: 303/293–1670.

**SUPPLEMENTARY INFORMATION**

### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

### B. South Dakota

South Dakota initially received final authorization in November 1984. Revisions to the program were approved on June 17, 1991, June 29, 1992, and September 8, 1993.

EPA has reviewed South Dakota's application, and has made an immediate final decision that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to South Dakota. The public may submit written comments on EPA's immediate final decision up until February 9, 1994. Copies of South Dakota's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of South Dakota's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

A draft application was submitted on April 30, 1993. The State of South Dakota addressed all of EPA's concerns prior to submittal of the final application. Thus, the South Dakota program is granted immediate final authorization for the provisions in the following Table.

PROVISIONS

| Federal Register reference | State authority |
|---|---|
| 1. Listing of Spent Pickle Liquor, 51 FR 19320, 5/28/86 | 74:28:22:01 |
| 2. Liability Coverage-Corporate Guarantee, 51 FR 25350, 7/11/86 | 74:28:25:01, 74:28:28:01 |
| 3. Standards for Hazardous Waste Storage and Treatment Systems, 51 FR 25422, 7/14/86, 51 FR 29430, 8/15/86 | 74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:25:01, 74:28:28:01, 74:28:26:01 |
| 4. Corrections to List of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, 8/6/86 | 74:28:22:01 |
| 5. Biennial Report Correction, 51 FR 8/8/86 | 74:28:25:01, 74:28:28:01 |
| 6. Exports of Hazardous Waste, 51 FR 28664, 8/8/86 | 74:28:22:01, 74:28:23:01, 74:28:24:01 |
| 7. Standards for Generators, 51 FR 35190, 10/1/86 | 74:28:23:01 |
| 8. Listing of EBDC, 51 FR 37725, 10/24/86 | 74:28:22:01 |

PROVISIONS—Continued

| Federal Register reference | State authority |
|---|---|
| 9. Revised Manual SW-846; Amended Incorporation by Reference, 52 FR 8072, 3/16/87 | 74:28:21:02, 74:28:26:01 |
| 10. Closure/Post-closure Care for Interim Status Surface Impoundments, 52 FR 8704, 3/19/87 | 74:28:28:01 |
| 11. Definition of Solid Waste; Technical Corrections, 52 FR 21306, 6/5/87 | 74:28:22:01, 74:28:27:01 |
| 12. Amendments to Part B Information Requirements for Disposal Facilities, 52 FR 23447, 6/22/87, amended 9/9/87 | 74:28:26:01 |
| 13. List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, 9/9/87 | 74:28:25:01, 74:28:26:01 |
| 14. Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87 | 74:28:22:01 |
| 15. Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87 | 74:28:23:01 |
| 16. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314, 11/18/87 | 74:28:25:01, 74:28:28:01 |
| 17. HSWA Codification Rule 2 52 FR 45788, 12/1/87 | 74:28:26:01, 74:28:25:01, 74:28:28:01 |
| 18. Hazardous Waste Miscellaneous Units, 52 FR 46946, 12/10/87 | 74:28:21:02, 74:28:25:01 |
| 19. Technical Corrections: Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88 | 74:28:22:01 |
| 20. Identification and Listing of Hazardous Waste; Technical Correction, 53 FR 27162, 7/19/88 | 74:28:22:01 |
| 21. Farmer Exemption; Technical Corrections, 53 FR 27164, 7/19/88 | 74:28:23:01, 74:28:25:01, 74:28:28:01, 74:28:30:01 |
| 22. Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88 | 74:28:21:02, 74:28:22:01 |
| 23. Hazardous Waste Management System; Standards for Hazardous Waste Tanks, 53 FR 34079, 9/2/88 | 74:28:21:02, 74:28:25:01, 74:28:28:01, 74:28:26:01 |
| 24. Identification and Listing of Hazardous Waste; Designation of Reportable Quantities, 53 FR 35412, 9/13/88 | 74:28:22:01 |
| 25. Permit Modification for Hazardous Waste Management Facilities 53 FR 37912, 9/28/88, amended 10/24/88 | 74:28:26:01, 74:28:25:01, 74:38:28:01 |
| 26. Statistical Methods for Evaluating Ground-Water Monitoring DA, 53 FR 39720, 10/11/88 | 74:28:25:01 |
| 27. Identification and Listing of Hazardous Waste; Removal of Iron Dextran from List of Hazardous Wastes, 53 FR 43878, 10/31/88 | 74:28:22:01 |
| 28. Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from List, 53 FR 43881, 10/31/88 | 74:28:22:01 |
| 29. Standards for Generators of Hazardous Waste, 53 FR 45089, 11/8/88 | 74:28:23:01 |
| 30. Hazardous Waste Misc. Units Standards Applicable to Owners and Operators, 54 FR 615, 1/9/89 | 74:28:26:01 |
| 31. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, 1/30/89 | 74:28:26:01 |
| 32. Mining Waste Exclusions 54 FR 36592, 9/1/89 | 74:28:22:01 |
| 33. Testing and Monitoring Activities, 54 FR 40260, 9/29/89 | 74:28:21:02, 74:28:22:01 |
| 34. Reportable Quantity Adjust. Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89 | 74:28:22:01 |
| 35. Reportable Quantity Adjust. 54 FR 50968, 12/11/89 | 74:28:22:01 |
| 36. Changes to Part 124 48 FR 14146, 4/1/83, amended 6/30/83, 7/26/83, 9/26/83, 1/4/89 | 74:28:26:01, SDCL 34A-11-12 SDCL 1-26-17, MOA |
| 37. Mining Waste Exclusion II 55 FR 2322, 1/23/90 | 74:28:21:02, 74:28:22:01, 74:28:23:01 |
| 38. Modification of F019 Listing 55 FR 5340, 2/14/90 | 74:28:22:01 |
| 39. Testing and Monitoring Activities; Technical Correction 55 FR 8948, 3/9/90 | 74:28:21:02, 74:28:22:01 |
| 40. Listing of 1,1-dimethylhydrazine, Production Wastes 55 FR 18496, 5/2/90 | 74:28:22:01 |
| 41. Criteria for Listing Toxic Wastes; Tech. Amend. 55 FR 18726, 5/4/90 | 74:28:22:01 |
| 42. HSWA Codification Rule Double Liners, Correction, 55 FR 19262, 5/9/90 | 74:28:25:01 |
| 43. Organic Air Emission Standards, for Process Vents and Equipment Leaks, 55 FR 25454, 6/21/90 | 74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:28:01, 74:28:26:01 |

**C. Decision**

I conclude that South Dakota's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted final authorization to operate its hazardous waste program as revised.

South Dakota has not requested authorization to operate its hazardous waste program, as revised, in "Indian Country" as defined in 18 U.S.C. 1151. Accordingly, today's decision to grant South Dakota final hazardous waste authorization, as revised, does not extend to Indian Country. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to "Indian Country" in South Dakota.

South Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. South Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to issue orders under sections 3008, 3013, and 7003 of RCRA.

South Dakota has agreed to submit a draft application for RCRA cluster 1 and land disposal restriction rules by December 31, 1993, a draft application for RCRA cluster 2 by December 31, 1994. Final applications will be submitted within 60 working days of receipt of EPA's comments on the draft application. The State has agreed to submit a final application for the TC rules within six months of EPA's decision on the proposed rule (December 24, 1992) to suspend the Toxicity Characteristics rule (Hazardous Waste Codes D018 through D043).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive order 12866.

*Certification Under the Regulatory Flexibility Act*

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: December 28, 1993.

Jack W. McGraw,

*Acting Regional Administrator.*

[FR Doc. 94–494 Filed 1–7–94; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

**41 CFR Part 105–57**

**Collection of Debts by Federal Tax Refund Offset**

**AGENCY:** General Services Administration.

**ACTION:** Final rule.

**SUMMARY:** This document amends the General Services Administration (GSA) Regulations by adding procedures to implement the Federal Tax Refund Offset Program in GSA. Participation in the program is mandated by the Cash Management Improvement Act amendments of 1992. The GSA expects to improve the collection of delinquent debts due the agency by participation in the Federal Tax Refund Offset Program.

**EFFECTIVE DATE:** January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Bernie Kanzler, Office of Finance, Financial Information Control Division (BCD), (202–501–2923).

**SUPPLEMENTARY INFORMATION:** The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order (E.O.) 12866 of September 10, 1993, because it is not likely to result in an economic impact exceeding $100 million or more, to have a material adverse effect on the economy, environment or safety, to interfere with the actions of another agency, to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. Therefore, a regulatory assessment has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and the consequence 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 net cost to society.

**Regulatory Flexibility Act**

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.).

**List of Subjects in 41 CFR Part 105–57**

Administrative practice and procedure, Claims, Income taxes.

Accordingly, 41 CFR chapter 105 is amended by adding part 105–57 to read as follows:

## PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

Sec.
105–57.001 Purpose.
105–57.002 Applicability and scope.
105–57.003 Administrative charges.
105–57.004 Reasonable attempt to notify.
105–57.005 Notice requirement before offset.
105–57.006 Consideration of evidence.
105–57.007 Change in conditions after submission to IRS.

Authority: 31 U.S.C. 3720A.

**§ 105–57.001 Purpose.**

This part establishes procedures for the General Services Administration (GSA) to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to GSA.

**§ 105–57.002 Applicability and scope.**

(a) This part implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Has been delinquent for at least three months but, except in the case of a judgment debt, has not been delinquent more than ten years at the time the offset is made;

(2) With respect to which, GSA has given the taxpayer at least 60 days, from the date of notification, to present evidence that all or part of the debt is not past due or legally enforceable, has considered such evidence, and has determined that the debt is past due and legally enforceable;

(3) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(4) Cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(5) Has been disclosed by GSA to a credit reporting agency, including a consumer reporting agency as authorized by 31 U.S.C. 3711(f);

(6) With respect to which, GSA has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any income tax refunds due the taxpayer;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations relating to eligibility of a debt for tax refund offset, at 26 CFR 301.6402–6T, have been satisfied.

**§ 105–57.003 Administrative charges.**

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

**§ 105–57.004 Reasonable attempt to notify.**

In order to constitute a reasonable attempt to notify the debtor, GSA must have used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103 (m)(2) or (m)(4), within one year preceding the attempt to notify the debtor.

**§ 105–57.005 Notice requirement before offset.**

The notification provided by GSA to the debtor will inform the debtor how to go about presenting evidence to GSA that all or part of the debt is either not past due or is not legally enforceable.

**§ 105–57.006 Consideration of evidence.**

Evidence submitted by the debtor will be considered by officials or employees of GSA. Any determination that an amount of such debt is past due and legally enforceable will be made by such officials or employees. Evidence that the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

**§ 105–57.007 Change in conditions after submission to IRS.**

If the amount of a debt is reduced after submission by GSA and offset by IRS, GSA will refund to the debtor any excess amount and will promptly notify IRS of the refund. GSA will also promptly notify the IRS if, after submission of a debt to the IRS for offset, GSA:

(a) Determines that an error has been made with respect to the information submitted;

(b) Receives a payment or credits a payment to an account submitted; or

(c) Receives notification that the debtor has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

Dated: November 30, 1993.

**Dennis J. Fischer,**

*Chief Financial Officer.*

[FR Doc. 94–11 Filed 1–7–94; 8:45 am]

BILLING CODE 6820–34–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

### 42 CFR Parts 405, 410, 413, and 414

**[BPD–737–F]**

**RIN 0938–AF54**

### Medicare Program; Coverage of Epoetin (EPO) Used by Competent Home Dialysis Patients

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts as final the interim final rule that provided for Medicare coverage of EPO used by ESRD beneficiaries who dialyze at home and are competent to use the drug without medical or other supervision and established criteria for selection of patients that can be considered "competent" and for monitoring of the patients who are selected. It also makes minor changes in response to public comments on the interim rule.

The interim rule was necessary to implement section 4201(d)(1) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The purpose of the amendments is to facilitate use of EPO at home, while ensuring that such use of the drug is safe.

**EFFECTIVE DATE:** These rules are effective on February 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jackie Sheridan, (410) 966–4635.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Chronic renal failure (CRF) is a progressive and usually irreversible decline in kidney function that does not always require regular dialysis. However, CRF patients who have end-stage renal disease (ESRD) do require a regular course of dialysis or kidney transplantation in order to sustain life.

Section 299I of the Social Security Amendments of 1972 (Pub. L. 92–603) established the Medicare ESRD benefit by extending coverage to any individual who requires either dialysis or transplantation and meets the following requirements:

- Is fully or currently insured or entitled to monthly benefits under title II of the Social Security Act; or
- Is the spouse or dependent child of the insured or entitled individual.

The methods and amounts of payment for services to ESRD patients have changed over the years and are currently set forth in §§ 410.50, 410.52, and 413.170–413.179 of the HCFA rules. Law and program policy have moved over the years towards encouraging greater use of self-dialysis and home dialysis.

On June 1, 1989, the Food and Drug Administration (FDA) approved the generic drug epoetin which we commonly refer to as "EPO". EPO is a sterile, colorless, preservative-free, liquid, biologically engineered protein that stimulates the bone marrow to make new red blood cells. EPO may be covered under the Medicare program when used to treat anemia associated with chronic renal failure. Most chronic renal failure patients are anemic because their kidneys are unable to produce sufficient amounts of a substance called erythropoietin.

Patients with chronic renal failure include those who require renal dialysis and are eligible for Medicare under the end-stage renal disease (ESRD) provisions of the law. In accordance with the labeling approved by the FDA, EPO may be administered either intravenously or subcutaneously for the treatment of anemia associated with chronic renal failure or anemia induced by the drug AZT used by patients with the HIV virus. Individuals with chronic renal failure use the drug to elevate or maintain the red blood cell level (as measured by the hematocrit or hemoglobin level) and to decrease the need for blood transfusions. Chronic renal patients considered for initiation of EPO therapy should generally have a hematocrit of less than 30%.

In July, 1989, we issued instructions in the Provider Reimbursement Manual—Part 1 (Chapter 27, Transmittal 11) authorizing Medicare contractors to start paying for the drug EPO, as of June 1, 1989. Coverage instructions were issued in November 1989 in the Intermediary Manual—Part 3 (Transmittal 1449), Carriers Manual—Part 3 (Transmittal 1329), Hospital Manual (Transmittal 576) and the Renal Dialysis Facility Manual (Transmittal 42). The effective date of the coverage instructions was also June 1, 1989. The Medicare regulations were not amended at that time.

Before enactment of Public Law 101-508 (OBRA '90), home use of EPO was not covered. For patients who dialyzed at home to receive Medicare payment for EPO, the drug had to be administered either in an ESRD facility or as a service "incident to" a physician's professional services.

### II. Statutory Provisions

Section 4201(d)(1) of OBRA '90 amended section 1861(s)(2) of the Act by adding a new subparagraph (Q) that—

- Provides for coverage, effective July 1, 1991, of EPO that is used by home dialysis patients who are competent to use the drug without medical or other supervision and for coverage of items related to administration of the drug; and
- Requires the Secretary to establish by regulation methods and standards for the safe and effective use of the drug at home.

Section 4201(c) of that same law provided for payment for EPO furnished to ESRD patients by Medicare approved dialysis facilities to be made at the rate of $11 per 1,000 units, rounded to the nearest 100 units, effective January 1, 1991. Section 13566 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93, Pub. L. 103–66) sets the rate at $10 per 1,000 units effective January 1, 1994.

Typically, EPO is administered at the end of the dialysis treatment. Therefore, unless medical documentation shows that it is necessary to administer EPO at a time other than during dialysis, payment for patients who dialyze at a facility is made only to the facility.

The change made by section 13555(b) of OBRA '93, which provides for

coverage of EPO self-administered by any dialysis patient (not limited to those who dialyze at home) will be implemented by separate regulations.

For home use of EPO supplied to a home dialysis patient competent to administer the drug without medical supervision, HCFA pays only a Medicare approved dialysis facility or a supplier of home dialysis equipment and supplies, if the patient obtains the drug directly from the supplier. In either case, payment for home use of EPO is made at the rate described above.

If a home patient is competent to use EPO without supervision and the drug has been prescribed, generally the patient's dialysis facility would furnish it. If a physician administers EPO to the patient, it should be the physician who receives the Monthly Capitation Payment (MCP) for furnishing the beneficiary's renal-related services. If a physician other than the MCP physician furnishes EPO, this physician must look to the MCP physician for payment for EPO administration. In this latter case, HCFA pays on a reasonable charge basis for the drug, but makes no additional payment to the physician for administration.

HCFA will announce annually, for public comment, whether an update in the EPO allowance is appropriate. By statute, any increase will not exceed the percentage increase (if any) in the implicit price deflator for the gross national product for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

## III. Provisions of the Interim Final Rule

In the interim final rule with comment period, published on September 4, 1991, we made the changes discussed below:

A. Major changes.

We amended subpart U of part 405 of the HCFA rules, which sets forth the conditions for coverage of services furnished to ESRD beneficiaries, as follows:

1. Patient selection.

To ensure the safe and effective use of EPO by home dialysis patients, we amended § 405.2163 to require that the patient's dialysis facility or the physician responsible for all dialysis-related services make a comprehensive assessment of the patient and the patient's needs at the time of selection for EPO therapy.

We emphasized that proper patient selection is necessary for a safe, effective program of EPO therapy at home. It is necessary for the dialysis facility or the physician responsible for all dialysis-related services to assess—

- Whether the patient will actually be able to administer the drug or have available the necessary assistance from a care-giver; and
- Whether the patient complies with certain elements necessary for successful EPO therapy.

Accordingly, we required that, in order to be selected for home use of EPO, a patient must—

- Be a home dialysis patient (either peritoneal or hemodialysis method).
- Have a hematocrit (or comparable hemoglobin) of less than 30 percent unless medical documentation justifies a patient's need for EPO with a hematocrit higher than 30 percent. For example, a patient with severe angina, severe pulmonary disease, or severe hypotension may require EPO to prevent adverse symptoms even though the patient has a higher hematocrit.
- Be under the care of the physician who is responsible for the dialysis-related services and who prescribes EPO, and under the care of the renal dialysis facility that establishes the plan of care for the services and monitors the progress of the home EPO therapy.
- Be trained by the facility to inject EPO or have an appropriate caregiver who is trained to inject EPO.

In addition, as part of the assessment, we required the following:

a. The patient's hematocrit (or hemoglobin), serum iron, transferrin saturation, serum ferritin, and blood pressure must be measured.

b. An appropriate protocol, developed by the patient's physician or facility and including monitoring of blood pressure, must be given to the patient for the safe and effective use of the drug.

c. The patient must be capable of performing self-administration of EPO, be able to learn aseptic technique, and be able to read the drug labeling, or must have a primary care-giver who can perform these tasks.

d. The patient must be able to adhere to a disciplined medical regimen.

2. Patient care plan.

To ensure adequate monitoring of home EPO therapy, we amended § 405.2137(b) to add a new paragraph (b)(7) which requires that the patient plan for a home dialysis patient who uses EPO in the home include the following:

- Review of diet and fluid modifications to monitor iron stores and hyperkalemia related to dietary indiscretion or elevated blood pressure.
- Reevaluation of the patient's dialysis prescription taking into account the patient's increased appetite and red blood cell volume.
- A method of teaching the patient to identify the signs and symptoms of hypotension and hypertension.
- The decrease or discontinuance of EPO if hypertension is uncontrolled.
- A method of followup on blood work and a means to keep the physician informed of the results.

3. Other concerns.

In order to minimize possible abuse of EPO, we revised § 405.2163(g)(4) to require that the physician or facility ensure that "on hand" EPO is limited to a two-month supply.

We also requested the public's views and suggestions regarding this policy, and any other issues, including whether it is necessary to impose special storage requirements for safe-keeping of EPO, considering that the drug contains no preservatives and that its presence might entail possible risks to children in the household.

B. Other minor changes.

We also made minor changes to codify in the rules the coverage of EPO in general and to reflect the expansion of that coverage to include EPO used at home by home dialysis patients. (As explained in the "Background" section of the preamble to the interim rule, previous coverage of EPO was implemented through general instructions issued by HCFA, but not reflected in the rules.)

*Section 410.10* We amended this section to show that EPO used at home by home-dialysis patients is now covered as one of the services included in "Medical and other health services", as defined in section 1861(s) of the Social Security Act.

*Section 410.29* We amended this section to show that EPO may be covered as an exception to the general exclusion of drugs that may be self-administered.

*Section 410.50* We amended this section to show that medically necessary drugs and biologicals are covered as part of institutional dialysis services furnished in a dialysis facility. (EPO covered as a dialysis facility service is paid as an add-on to the facility payment rate.)

*Section 410.52* We amended this section to show that EPO for use by competent patients in the home is now included in the scope of ESRD services furnished in the patient's home.

*Section 413.170(a)(1)* We amended this section to update the cross references to the ESRD program coverage provisions in the regulations.

*Section 413.170(c)* We added a new paragraph (c)(6) to describe reimbursement for EPO when it is furnished by a Medicare-approved

dialysis facility or a supplier of home dialysis equipment and supplies.

*Sections 414.300 and 414.335* We added a new paragraph (d) to § 414.300 and a new § 414.335 to specify method of payment for EPO that the beneficiary obtains directly from a supplier of home dialysis equipment and supplies.

## IV. Discussion of Comments

We received fifteen letters of comment from two nephrologists, three renal dietitians, three nephrology nurses, two dialysis centers, two professional associations, one home health agency, one medicare carrier, and one law firm.

### *A. Patient Selection*

*Comment:* Two commenters, both nephrologists, recommended that EPO be given for patients with hematocrits greater than 30 percent, even up to 35 percent. One of the commenters stated that a hematocrit of 30 percent is not normal and that in a male, for whom normal hematocrit would be closer to 40 percent, a 30 percent reading means that the individual is functioning at three-quarters of his or her ability to do exercises as well as other things. That, combined with the chronic uremic state, which all dialysis patients have, makes it much more difficult for these patients to function in a useful manner. The commenter believes hematocrits closer to 35 percent would make much more sense for keeping these patients in a normal state and making them generally much more functional. The other commenter stated that his dialysis center is not required to justify continuation of EPO to patients with hematocrits of up to 35 percent. Commenters asked whether justification would be required each month or a single letter of justification would suffice.

*Response:* The drug labeling for EPO recommends dosage to maintain a patient's hematocrit in the range of 30–33 percent (target range) with a maximum of 36 percent. It also states that the dose of EPO should be reduced when the hematocrit reaches the target range of 30–33 percent or increases by more than 4 points in any two-week period. Therapy with EPO can result in an abnormal increase in red blood cells if the hematocrit is not carefully monitored and the dose appropriately adjusted.

We believe we are justified in requiring a hematocrit of less than 30 percent for initiation of EPO therapy at home. Thirty percent is the low end of the target range. Medical review guidelines in the manuals used by Medicare intermediaries and carriers provide for payment of subsequent claims for EPO without documentation of medical necessity as long as the hematocrit is below 36 percent. We have revised § 405.2163(g)(2) to clarify that the 30 percent hematocrit threshold applies only to initiation of EPO therapy.

*Comment:* One commenter, operating a renal dialysis program in a university hospital, pointed out that, due to the close working relationship that exists between the renal physicians, dialysis staff and outpatient department, a physician may order EPO for an ESRD patient, note that order in the patient's chart, and verbally inform the pharmacist of the order without providing a written prescription. The commenter believes this procedure to be the norm. However, the fiscal intermediary processing those claims will not pay for any claims for which a written prescription is not provided. The commenter believes this process to be burdensome, especially since the order is documented in the patient's medical chart. The commenter also asked whether there will be any policy affecting refillable prescriptions.

*Response:* We are sympathetic to the concerns expressed by the commenter and remain sensitive to requirements that may appear to be overly burdensome. However, we believe the intermediary is justified in requiring a written prescription. While in the case the commenter presented it might seem to create additional paperwork, a written prescription protects the pharmacist as well as providing a basis for payment by the intermediary. The intermediary or carrier has discretion to determine whether to require documentation on refillable prescriptions on the basis of reasonableness and necessity.

*Comment:* The same commenter suggested that we establish more specific guidelines for "regular monitoring" of patients who self-administer EPO, especially with regard to maximum hematocrit readings. Two commenters recommended including guidelines similar to those in the manufacturer's labeling. Two other commenters suggested that we include a mechanism for monitoring patient compliance such as the completion of a patient log.

*Response:* The drug labeling for EPO provides general therapeutic guidelines with regard to the starting dose and maintenance dose, as well as when the dose should be reduced or increased. We believe the labeling provides adequate guidelines and that physicians should have the flexibility to interpret those guidelines with regard to their patients. Since drug regimens will vary depending on the individual patient's prescribed plan of treatment, we do not wish to be overly prescriptive with respect to specific monitoring protocols. We have, however, revised language at § 405.2163(g)(2)(iii) to require that the physician follow the drug labeling instructions when monitoring the EPO home therapy as well as in developing appropriate protocols. We also agree that a patient log is a valid means to monitor compliance. To encourage use of that mechanism or similar effective mechanisms, we have added "(such as a patient log)" in § 405.2137(b)(7).

*Comment:* One commenter asked what type of medical documentation will be required to support payment for occasional use of EPO prior to dialysis, required because of temporary patient weakness or a low hematocrit reading.

*Response:* Medicare eligibility based on ESRD is not established until the patient has been undergoing routine dialysis for three months or has a kidney transplant. Thus it is unlikely that a patient undergoing EPO therapy before dialysis would be a Medicare beneficiary. However, if a beneficiary whose Medicare eligibility is based on age or disability receives EPO for either of the types of anemia listed on the drug labeling, the drug may be covered if furnished "incident to a physician's service". Routine documentation requirements for this treatment include appropriate diagnostic coding on the HCFA–1500 claim form filed by the physician.

*Comment:* One commenter stated that the rule implies that home dialysis patients have not been receiving EPO and that the need for EPO must be evaluated for each patient. The commenter points out that many patients have met the criteria for EPO, have been monitored monthly by appropriate laboratory tests and frequent blood pressure checks, and may already have been determined to have hematocrits within the target range. The commenter recommended that we not require full evaluation of patients who are already on EPO.

*Response:* We realize that a patient who is receiving EPO may have a hematocrit within the target range of 30–33 percent. We also realize that any patient considered for home use of EPO would be under the care of a physician who furnishes all dialysis-related services. We assume that, in determining whether the patient is an appropriate candidate for home use, the physician would take into account any previous evaluations and whether the patient is currently receiving EPO. Nevertheless, we continue to believe

that every patient must be evaluated before being approved for home use of EPO. The physician may base the evaluation in part on information previously obtained in the course of monitoring dialysis, but must also evaluate other factors, such as competence to inject the drug and capacity for proper storage of the drug, that are not pertinent to receiving EPO in a facility or a physician's office.

*Comment:* One commenter believes that home health agencies (HHAs) should not have to adhere to the standard of ensuring that the two-month supply limitation is met, especially in a patient's own household. The commenter believes that such a standard could impose on the HHA inappropriate and unwarranted liability, especially since EPO is a drug that allegedly "may be abused." The same commenter also requested that the phrase, "in the judgment of the home health agency," be inserted after the word "patient" in § 405.2163(g)(2) to prevent reviewing agencies from alleging that the patient did not have the abilities necessary to self-administer EPO.

*Response:* Under § 405.2163 (g)(2) and (h)(3), the patient's physician or dialysis facility (and not the supplier) is responsible for ensuring that the patient is capable of self-administering the drug and, through the drug prescriptions, that the amount "on hand" does not exceed a 2-month supply. Accordingly, if an HHA qualifies to be a supplier of home dialysis equipment and supplies, that HHA would not be subject to the responsibilities that aroused the commenter's concern. Ordinarily, HHAs would not be involved in monitoring self-administration of EPO.

*Comment:* One professional association commented that the wording in § 405.2163(g)(2)(iii), that is, "being able to adhere to a disciplined medical regimen", is a broad subjective statement that lacks meaning without some measurement of nonadherence. It recommended replacing the language with the words "be able to meet the requirements of an established home dialysis training program and periodic reassessment by qualified training staff."

*Response:* We agree that the cited current language lacks specificity and have removed it. However, we did not add the suggested language because, in this context, it is training in the self-administration of EPO (rather than in self-dialysis as such) that is pertinent, and that is already dealt with in paragraph (g)(3).

*B. Patient Care Plan*

*Comment:* Three commenters, all renal dietitians, questioned the wording of the requirement to review a patient's diet and fluid modifications to monitor adequate iron stores and hyperkalemia. All commented that the amount of iron required during EPO therapy can rarely be met with dietary iron, since such diets are typically iron deficient. They noted that oral or even intravenous supplemental iron is required and recommended that we revise the language to include the following:

- Review of diet and fluid intake for indiscretions as reflected by hyperkalemia and elevated blood pressure secondary to volume overload.
- Review of medications for adequate provision of supplemental iron.
- Evaluation of hematocrit and measures of iron stores.

*Response:* We agree with these comments and have revised § 405.2137(b)(7) (i)–(iii) to include the suggested content.

*C. Other Concerns*

*Comment:* One commenter asked for clarification of the effective date.

*Response:* The law (section 4201(c) of the Omnibus Budget Reconciliation Act of 1990) that set the payment rate at $11 per 1,000 units was effective January 1, 1991. However, under section 4201(d) of that Act, coverage of EPO self-administered at home by home dialysis patients is effective July 1, 1991. Thus, Medicare payment is available for services that are furnished on or after that date and that also meet the requirements of the interim final rule published on September 4, 1991.

*Comment:* Two commenters felt that an initial 2-month EPO supply might be too much since (1) patients who receive the drug from a renal facility must be seen by their physician monthly and (2) a 2-month supply might discourage patients from maintaining blood pressure and hematocrit monitoring. The commenters were also concerned that the supplier or renal facility may be requested to take back unused portions of EPO, if the home dialysis patient received a kidney transplant or died soon after receiving the supply. They suggested that a smaller quantity would alleviate the beneficiary's coinsurance responsibility.

*Response:* First, we note that the provision sets the 2-month initial supply as a maximum limit, to be used when circumstances make a 2-month supply appropriate. We recognize that patients who obtain their supplies directly must be monitored monthly, and we would expect a physician to prescribe a lesser amount for some patients. In § 405.2163, we have added a paragraph (h) to highlight the responsibilities of the physician and the dialysis facility. Paragraph (h)(3) makes clear that the 2-month supply is a maximum.

*Comment:* One commenter stated that billing procedures instructing an initial billing of up to a 2-month supply followed by subsequent billings limited to a 1-month supply are inconsistent with our proposed regulations which appear to intend that the beneficiary maintain a 2-month supply at all times.

*Response:* The commenter has misinterpreted the intent of the policy. The intent is not to require a "minimum" 2-month supply, but rather to ensure that the patient has at least a 1-month supply. As stated above, the physician may initially prescribe "up to" a 2-month supply. When half of the initial 2-month supply is used, the next 1-month supply may be ordered, and so on.

*Comment:* In response to our specific request for comments on whether it is necessary to impose special storage requirements for safe-keeping of EPO, two commenters stated that storage and home safety issues need to be more specifically addressed and documented. They recommended that we require, as part of the assessment, assurance that the patient has the ability to store EPO under refrigeration, secure from tampering and out of the reach of children.

*Response:* We agree with the commenters and have revised § 405.2163(g) to add the suggested language.

*Comment:* One commenter questioned whether HCFA will establish regional intermediaries to process home EPO claims.

*Response:* EPO claims from home dialysis patients who obtain their dialysis supplies directly from suppliers will be processed by four regional carriers that were designated under a final rule published on June 18, 1992 (at 57 FR 27290), and that also process claims for durable medical equipment, prosthetics, orthotics and other items covered under Medicare Part B.

However, claims for items furnished incident to a physician's service as defined in 42 CFR 410.10(b) will continue to be processed under the current carrier configuration, and regional intermediaries will continue to process claims from facilities.

*Comment:* One commenter stated that at least one 8-hour day should be allocated to train a patient in proper techniques of self-administration. The commenter also asked whether a

training fee can be charged for this training time or whether any additional reimbursement can be obtained since this added monitoring activity expands physician activities under the monthly capitation plan.

*Response:* We agree that patients need to be properly trained in the self-administration of EPO; however, we do not believe that we should set a specific minimum time limit for training as suggested by the commenter. We believe there should be sufficient flexibility to allow for differences in individual patients' learning ability.

There is no separate payment for training or retraining in, and monitoring of, home use of EPO. A patient should be trained to self-administer EPO as part of the home dialysis training program that is paid for at the home dialysis training composite rate in accordance with § 413.170 of the HCFA rules. With respect to monitoring self-administration of EPO, we believe the additional physician's time and effort are minimal and should be subsumed within the physician's monthly capitation payment under § 414.314 of those rules.

*Comment:* Two commenters asked whether reimbursement can be expected for home supplies needed to self-administer EPO, e.g., syringe, needle, alcohol wipes.

*Response:* Payment for the medical supplies needed for administration of EPO, whether in the home or in a facility, is included in the Medicare payment rate for EPO. Both before OBRA '90 and since the implementation of those provisions, HCFA has always included the cost of supplies as part of the Medicare payment for EPO. We see no basis for different treatment of supplies for self-administration of EPO in the home.

The payment rate for EPO is $11.00 per 1,000 units and, we believe, is more than adequate to cover the minimal cost of supplies (less than 20 cents per administration). The manufacturer of EPO is protected from competition for seven years by the Orphan Drug Act. The company reports substantial profits and gives rebates to facilities depending upon usage. It appears that facilities pay considerably less for EPO than the Medicare rate, providing sufficient payment for supplies needed for administration.

The source of this information is the Department's Office of the Inspector General (OIG) study, "Draft Report—Review of Epogen Reimbursement" (Audit No. A–01–92–00506). The OIG reviewed invoices paid by dialysis facilities and financial reports filed by the manufacturer and found that facilities generally pay nine to ten percent less for EPO than the Medicare payment rate. In addition, the manufacturer gave surveyed facilities end-of-year rebates ranging from two percent to eight percent depending upon the volume of EPO used.

*Comment:* Two commenters expressed the hope that local physicians will be able to continue to administer EPO incident to a physician's service.

*Response:* This regulation is in no way intended to preclude provision of EPO furnished incident to a physician's service.

*Comment:* One commenter was of the opinion that there is no statutory authority for the provision in § 413.170(c)(6)) requiring suppliers to accept assignment of benefits for EPO.

*Response:* The statutory provisions for payment of benefits for EPO are in section 1881(b)(1). Section 1881(b)(1)(B) of the Act provides for payments "to or in behalf of" beneficiaries for home dialysis supplies and equipment. However, with respect to payment for self-administered EPO, section 1881(b)(1)(C) permits payment only to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician. There is no authority in the law to pay this benefit to a beneficiary. Therefore, the law implicitly requires payment to a supplier under assignment.

Furthermore, any other reading of the statute would have anomalous results. For example, if the statute did not require suppliers to accept assignment, the beneficiary would be protected for charges for home dialysis supplies and equipment, but not for EPO furnished directly by the supplier. Nothing in the legislative history suggests the Congress intended such a result.

## V. Specific Changes to the Interim Final Rule.

In response to the comments discussed above, we have made the following changes in the text of the interim final rule published on September 4, 1991.

1. Patient care plan.

We have revised § 405.2137(b)(7) to establish separate requirements for review of medication and evaluation of hematocrit for iron stores and to suggest use of a patient log for keeping the physician informed of the results of blood tests.

2. Patient selection.

We have revised § 405.2163 to—

- Require that the physician follow the drug labeling when he or she establishes the protocol and monitors home use of EPO;
- Include as an assessment requirement obtaining assurance that EPO can be stored under refrigeration, secure from tampering and out of reach of children in the patient's residence.
- Add a paragraph (h) to highlight the responsibilities of the physician and the dialysis facility and to make clear that the "two-month" supply of EPO is a maximum and that control of the amount "on hand" is maintained through the physician's prescriptions.

B. Technical amendments.

1. Throughout the text "Erythropoietin" is changed to "Epoetin", which is the generic name of the drug.

2. In § 413.170(c)(6), the cross-reference is corrected.

## VI. Regulatory Impact Statement

### *A. Executive Order 12866*

Executive Order 12866 (E.O. 12866) requires us to prepare an analysis for any document that meets one of the E.O. 12866 criteria for a "significant regulatory action"; that is, that may—

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In the proposed rule, we determined that a regulatory impact analysis was not required for these rules because they would not have an annual impact of $100 million or more or meet any of the other threshold criteria. However, we indicated our intention to include in the final rule a cost and benefit analysis that considers the social benefits to Medicare beneficiaries who use EPO at home. We asked for specific comments concerning benefits from home administration of EPO. We listed, as examples of these benefits, savings in travel and transportation costs previously required to obtain EPO or the ability of the beneficiary to resume employment. We also requested public comment on any benefits and costs that may be anticipated as a result of this regulation.

No comments were received concerning the benefits of self-

administration of EPO or on any portion of the impact analysis. Thus, we have prepared an analysis based on our review of data available to us and of pertinent literature.

The following chart summarizes home dialysis beneficiary records for the period February 28, 1991 through February 29, 1992. It reflects the most current data on file and also encompasses the time immediately before and after July 1, 1991, the effective data of coverage of home administration of EPO. We identified, as ESRD beneficiaries who are potentially eligible for home use of EPO, beneficiaries who have completed the necessary home dialysis training or were home dialysis patients during this period. The chart indicates the number of beneficiaries on home dialysis and the number receiving EPO therapy as of June 30, 1991. The same information is shown for the billing period November 1, 1991 through January 31, 1992, the most current billing information for home dialysis beneficiaries.

HOME DIALYSIS BENEFICIARIES

[February 28, 1991–February 29, 1992]

| | Home Dialysis Beneficiaries | Self-Adm.* | Fac/Phy.** | Not Receiv'g EPO |
|---|---|---|---|---|
| As of 6/30/91 | 38,515 | | 12,733 | 25,782 |
| Billing Period 11/1/91–1/31/92 | 38,515 | 1,656 | 11,890 | 24,969 |

*Self-Adm. stands for self-administered.
**Fac/Phy. stands for facility or physician administered.

Our records indicate that as of June 30, 1991 there were 38,515 beneficiaries that dialyzed at home. Before coverage of home administration of EPO, 12,733 of these beneficiaries received EPO in the ESRD facility or in a physician's office. As a result of coverage of home administration of EPO, 1,656 beneficiaries or 4.3 percent of home dialysis beneficiaries self-administer EPO. We estimate that this number will increase as more beneficiaries become qualified to self-administer EPO and realize the benefits of home administration.

In attempting to perform a cost-benefit analysis, we reviewed three published reports and one unpublished report. We also relied upon billing information submitted by intermediaries. Average expenditure for ESRD beneficiaries receiving EPO therapy approximate $6,900 exclusive of dialysis treatment. This amount includes the cost of the drug and other services such as iron treatment and hypertension therapy. The average annual cost for patients not using EPO approximates $450, exclusive of dialysis treatments, and includes the cost of other services such as blood transfusions and hepatitis therapy. The annual expenditures for EPO users represent very gross estimates. More definitive cost data and experience with the administration of EPO is needed in order to permit analysis of actual costs and EPO's relative effects.

As mentioned earlier in this preamble, use of EPO by chronic renal failure patients reduces or eliminates the need for blood transfusions. EPO also reduces the recipients' risk of transfusion-related illnesses. The transmission of non-A, non-B hepatitis is of greatest concern (see "Recombinant Human Erythropoietin: Factors to Consider in Cost-Benefit Analysis", American Journal of Kidney Diseases, Vol. XVII, No. 1, January 1991). Although rare, the threat of acquired immunodeficiency syndrome (AIDS) and hepatitis B should also be considered. For ESRD patients receiving EPO, the risk of hepatitis infection related to transfusions has been reduced from 13.8 to 4.5 percent because the patient's need for blood transfusions has been reduced and in some cases eliminated.

Reducing the need for transfusions also increases kidney transplant success in chronic renal failure patients by reducing sensitization. According to the above cited article, some individuals receiving frequent transfusions may develop cytotoxic antibodies. Excessive cytotoxity levels may result in increased waiting time for suitable organs. Also, when high cytotoxity levels are present, graft survival rates are reduced. When EPO is used, thus reducing or eliminating the need for transfusions, patients are more likely to retain transplanted organs successfully.

There are other potential benefits associated with the use of EPO. Since EPO stimulates the production of red blood cells thereby reducing or eliminating anemia, the need for hospitalization due to anemia or anemia-related illnesses could be expected to decline.

Another very important though not quantifiable benefit of receiving EPO is improved quality of life. An article appearing in The Journal of the American Medical Association (JAMA) (The Quality of Life of Hemodialysis Recipients Treated with Recombinant Human Erythropoietin, Vol. 263, No. 6, February 9, 1990) reported on the results of a study of over 300 hemodialysis patients in nine dialysis centers. The study showed that hemodialysis patients receiving EPO are happier—their energy levels are higher, physical functioning is improved, physical activity levels are increased, etc. Similar results were also reported in the American Journal of Kidney Diseases article mentioned earlier in this impact statement. Although these studies did not specifically study home dialysis patients, we believe that results would be equally true for this group.

In reviewing the literature on EPO, we also found that most EPO recipients require additional medications or therapies to counteract possible adverse effects. Some of the possible side effects of EPO therapy are iron depletion, hypertension, and arteriovenous graft clotting.

Iron Depletion—EPO recipients may not get the full benefit of increased hematocrits from EPO if they lack sufficient iron reserves. EPO increases the body's production of red blood cells. This requires sufficient iron reserves. Consequently, patients on EPO may become iron deficient. Their iron reserves must be monitored and iron supplements administered to ensure that the patient's iron reserves are not depleted.

Hypertension—Use of EPO may elevate a patient's blood pressure, a reaction that may be related to the rate of increase in hematocrit. Therefore, an EPO patient's blood pressure must be carefully monitored. Thirty percent of all EPO patients receive hypertension therapy.

Arteriovenous (AV) Graft Clotting—Fourteen percent of all EPO patients experience clotting of AV graft as compared to 6 percent of chronic renal patients not receiving EPO. The cause of the AV clotting is believed due to increased hematocrit.

The foregoing benefits and adverse effects of using EPO are the same for patients who receive the drug in a physician's office or ESRD facility as for patients who self-administer the drug. Those beneficiaries who received EPO in a physician's office or ESRD facility and, as a result of this regulation, shift to self-administration will realize further benefits, such as savings of time and in transportation costs. In order to receive the full benefit of EPO therapy, most patients receive it at least three times a week. Therefore, we estimate that the savings in transportation costs will average approximately $300 per beneficiary for calendar year 1992. Of course, this estimate is only an average; the actual saving will vary depending on distance traveled to and from the ESRD facility or physician's office by a particular beneficiary.

Since EPO is a relatively new drug, definitive information on its large scale effectiveness, direct costs, savings, etc., is not available. Literature supports the view that ESRD beneficiaries receiving EPO experience an improved quality of life, resulting in higher energy levels and improved physical functioning. For those beneficiaries who did receive EPO in a physician's office or ESRD facility and meet the criteria for self-administration, the change to self-administration will save time and eliminate travel expenses associated with office and facility visits. We expect that over time more home dialysis beneficiaries who did not receive EPO or received a reduced dosage because they were unable to travel to the physician's office or ESRD facility as often as needed will become candidates for self-administration of EPO. We do not have data on which to base a prediction of the number who will choose this form of administration. Obviously, each beneficiary's physician will need to consider potential adverse as well as beneficial effects.

*B. Regulatory Flexibility Act*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 602 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals are not considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

*Paperwork Reduction Act*

Section 405.2137 of this rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. When OMB approves these provisions, we will publish a **Federal Register** notice to that effect. If you comment on the information collection requirements, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt, Desk Officer for HCFA.

**List of Subjects**

*42 CFR Part 405*

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

*42 CFR Part 410*

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

*42 CFR Part 413*

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

*42 CFR Part 414*

End-stage renal (ESRD), Health professions, Laboratories, Medicare.

**42 CFR CHAPTER IV HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

The interim rule with comment period that was published on September 4, 1991, at 56 FR 43706, to amend Parts 405, 410, 413, and 414 of this chapter is adopted as final with the changes set forth below.

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for subpart U continues to read as follows:

**Authority:** Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2137 is amended to revise paragraph (b)(7), to read as follows:

**§ 405.2137 Condition: Patient long-term program and patient care plan.**

* * * * *

(b) *Standard: Patient care plan.* * * *

(7) For a home dialysis patient who uses EPO in the home, the plan must provide for monitoring home use of EPO that includes the following:

(i) Review of diet and fluid intake for indiscretions as indicated by hyperkalemia and elevated blood pressure secondary to volume overload.

(ii) Review of medications to ensure adequate provision of supplemental iron.

(iii) Ongoing evaluations of hematocrit and iron stores.

(iv) A reevaluation of the dialysis prescription taking into account the patient's increased appetite and red blood cell volume.

(v) A method for physician followup on blood tests and a mechanism (such as a patient log) for keeping the physician informed of the results.

(vi) Training of the patient to identify the signs and symptoms of hypotension and hypertension.

(vii) The decrease or discontinuance of EPO if hypertension is uncontrollable.

3. Section 405.2163 is amended to revise paragraph (g) and add a new paragraph (h), to read as follows:

**§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.**

* * * * *

(g) *Use of EPO at home: Patient selection.* The dialysis facility, or the physician responsible for all dialysis-related services furnished to the patient, must make a comprehensive assessment that includes the following:

(1) *Pre-selection monitoring.* The patient's hematocrit (or hemoglobin), serum iron, transferrin saturation, serum ferritin, and blood pressure must be measured.

(2) *Conditions the patient must meet.* The assessment must find that the patient meets the following conditions:

(i) Is a home dialysis patient.

(ii) Has a hematocrit (or comparable hemoglobin level) that is as follows:

(A) For a patient who is initiating EPO treatment, no higher than 30 percent unless there is medical documentation showing the need for EPO despite a hematocrit (or comparable hemoglobin level) higher than 30 percent. (Patients with severe angina, severe pulmonary distress, or severe hypertension may require EPO to prevent adverse symptoms even if they have higher hematocrit or hemoglobin levels.)

(B) For a patient who has been receiving EPO from the facility or the physician, between 30 and 33 percent.

(iii) Is under the care of—

(A) A physician who is responsible for all dialysis-related services and who prescribes the EPO and follows the drug labeling instructions when monitoring the EPO home therapy; and

(B) A renal dialysis facility that establishes the plan of care and monitors the progress of the home EPO therapy.

(3) *Conditions the patient or the patient's caregiver must meet.* The assessment must find that the patient or a caregiver who assists the patient in performing self-dialysis meets the following conditions:

(i) Is trained by the facility to inject EPO and is capable of carrying out the procedure.

(ii) Is capable of reading and understanding the drug labeling.

(iii) Is trained in, and capable of observing, aseptic techniques.

(4) *Care and storage of drug.* The assessment must find that EPO can be stored in the patient's residence under refrigeration and that the patient is aware of the potential hazard of a child's having access to the drug and syringes.

(h) *Use of EPO at home: Responsibilities of the physician or the dialysis facility.* The patient's physician or dialysis facility must—

(1) Develop a protocol that follows the drug label instructions;

(2) Make the protocol available to the patient to ensure safe and effective home use of EPO; and

(3) Through the amounts prescribed, ensure that the drug "on hand" at any time does not exceed a 2-month supply.

## PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

**Authority:** Secs. 1102, 1832, 1833, 1835, 1861 (r), (s), and (cc), 1871, and 1881 of the Social Security Act. (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x (r), (s), and (cc), 1395hh, and 1395rr).

2. Nomenclature change.

In §§ 410.10(k), 410.50(d), and 410.52(a)(4), "erythropoietin" is revised to read "epoetin".

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT

1. The authority citation for part 413 is revised to read as follows:

**Authority:** Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320a–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

### § 413.170 [Amended]

2. In § 413.170(c)(6), "Erythropoietin" is revised to read "Epoetin", and "§ 413.170(c)(5)(iii)" is revised to read "paragraph (c)(6)(iii) of this section."

## PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

**Authority:** Secs. 1102, 1833(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395hh, and 1395rr).

### § 414.300 [Amended]

2. In § 414.300(d), "Erythropoietin" is revised to read "Epoetin".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 23, 1993.

**Bruce C. Vladeck,**

*Administrator, Health Care Financing Administration.*

Approved: October 13, 1993.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 94–480 Filed 1–7–94; 8:45 am]

BILLING CODE 4120–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 22, 25, 80, 87, 90, 95 and 99

**[GN Docket No. 93-252; FCC 94–2]**

### Private Land Mobile Licenses; Reclassification

In the matter of implementation of sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services.

**AGENCY:** Federal Communications Commission.

**ACTION:** Procedures for waiver petitions.

**SUMMARY:** As a result of recent legislation, certain private land mobile radio licensees will be reclassified as commercial mobile radio service licensees and will be subject to foreign ownership restrictions within the Communications Act of 1934, as amended. The Commission has now established a procedure by which such licensees may file a waiver petition with the Commission to request retention of existing foreign ownership that would otherwise not be permitted. Such waiver petitions must be received at the Commission by February 10, 1994.

**DATES:** This document is effective January 10, 1994. Petitions for waiver must be filed with the Commission by February 10, 1994.

**ADDRESS:** Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** The Private Radio Bureau, Licensing Division, Consumer Assistance Branch, (717) 337–1212 (for information regarding the filing of waiver petitions). For information regarding this First Report and Order, contact Carmen Cintron at (202) 632–6450 (Common Carrier Bureau, Mobile Services Division) or Eric Malinen at (202) 632–6497 (Private Radio Bureau, Land Mobile and Microwave Division).

**SUPPLEMENTARY INFORMATION:**

### First Report and Order

Adopted: January 4, 1994; Released: January 5, 1994.

By the Commission:

*I. Introduction*

1. On September 23, 1993, we adopted a Notice of Proposed Rule Making (Notice) [1] in which we proposed, inter alia, to establish a procedure by which private land mobile radio licensees that will be reclassified as commercial mobile radio service (CMRS) providers pursuant to this rule making proceeding could file a waiver petition to retain existing foreign ownership. We now establish the filing procedure for these waiver petitions and remind all potentially affected licensees of the February 10, 1994, filing deadline. We also emphasize that filing such a petition will not prejudice the licensee's right at a later date to assert

[1] GN Docket No. 93–252, 8 FCC Rcd 7988, 8002–03 ¶¶ 76–78 (1993), 58 FR 53169 (October 14, 1993).

that it should not be classified as a CMRS provider.

*II. Background*

2. The Omnibus Budget Reconciliation Act of 1993 (Budget Act)[2] amended sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n), 332 (Communications Act), to create a comprehensive regulatory framework for all mobile radio services. "[A]ny provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993" is subject to the foreign ownership restrictions imposed on common carriers by section 310(b) of the Communications Act, 47 U.S.C. 310(b).[3] Nevertheless, the statute allows affected licensees to petition the Commission for waiver of the application of section 310(b) to any foreign ownership that lawfully existed as of May 24, 1993. The statute requires that these petitions for waiver be filed with the Commission by February 10, 1994 (within 6 months of enactment of the Budget Act). The Commission may grant such waivers to eligible petitioners only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

47 U.S.C. 332(c)(6)(A), (B).[4]

3. Section 310(b) states in relevant part:

No * * * common carrier * * * license shall be granted to or held by—

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

For the purposes of section 310(b), certain partnership interests, as well as certain other interests held by non-corporate entities and associations, may be considered ownership interests.[5]

4. The Notice proposed to establish a petition procedure to allow licensees to "grandfather" their foreign ownership. Under this procedure, petitioners would be required to (1) identify all foreign persons or entities holding an interest in the licensee and the percentage of ownership interest for each; and (2) certify that the identity and level of foreign ownership are unchanged since May 24, 1993, and that no change will occur in the future (other than divestiture of a foreign ownership interest to a domestic person or entity) without prior notice to the Commission.[6]

5. The Notice indicated that we intend to place the burden on licensees to file petitions, regardless of whether we have made a final determination as to whether the licensee is subject to reclassification as a CMRS provider. Furthermore, the Notice stated that while the filing of a petition would not prejudice a licensee's future arguments as to whether it should be reclassified, licensees who failed to file a timely petition would be subject to immediate enforcement of our foreign ownership restrictions.[7]

*III. Comments*

6. A single commenter responded to this issue. Roamer One, Inc., argues that the Notice misread the Budget Act's amendment to the Communications Act to the extent that it imposes "immediate" foreign ownership restrictions on all private radio licensees.[8] It maintains that while the Notice refers to private land mobile service providers that "may" be treated as common carriers, the statute refers to existing private land mobile service providers that "will" be treated as common carriers as a result of the enactment of the Budget Act.[9] It contends that, prior to the completion of this rule making proceeding, the Commission may not impose alien ownership restrictions on private radio licensees who are unlikely to be classified as CMRS providers.[10]

*IV. Discussion*

A. Who Should File a Waiver Petition

7. Initially, we agree with Roamer One that Section 332(c)(6) does not impose foreign ownership restrictions on all private radio licensees. As noted above, the foreign ownership restrictions apply only to those current private land mobile service providers that "will be" classified as CMRS providers "as a result of enactment of the [Budget Act]." As we discussed in the Notice, a private land mobile radio licensee could potentially be reclassified as a CMRS licensee if it meets two criteria: Its service: (1) Is "provided for profit," and (2) makes "interconnected service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." In addition, it is possible that a service might not fully satisfy the two criteria, but nonetheless be classified as CMRS if the Commission were to find that the service is the "functional equivalent" of CMRS.[11] If a licensee determines that there is a possibility that it will be reclassified as a CMRS provider, it must also determine whether its foreign ownership as of May 24, 1993, would be prohibited under section 310(b).[12]

8. Final rules governing regulatory classification of mobile services may not be available on or before the February 10, 1994, filing deadline. We recognize that this presents private land mobile licensees with the potentially difficult decision of whether they should file petitions for waiver. Therefore, in instances where there is any chance at all that the licensee might later be classified as a CMRS provider, we strongly encourage the licensee to err on the side of filing and thereby preserve all of its rights under the new statutory provisions. Similarly, if a licensee is

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[2] Pub. L. No. 103–66, Title VI, § 6002(b), 107 Stat. 312, 392, 395 (1993); see H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 492, 494–95 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1179, 1183–84.

[3] See 47 U.S.C. 332(c)(6); see also Budget Act, Section 6002(c)(2)(B) (effective dates). For the text of Section 310(b), see paragraph 3, infra.

[4] In regard to condition (B), the legislative history of the amended statute states: "In effect, this condition "grandfathers" only the particular person who holds the foreign ownership on May 24, 1993; the "grandfathering" does not transfer to any future foreign owners." H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 495 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1184.

[5] See *e.g.*, Wilner & Scheiner, 103 FCC 2d 511 (1985), reconsideration granted in part, 1 FCC Rcd 12 (1986); see also Moving Phones Partnership, L.P. v. FCC, 998 F.2d 1051, 1055–57 (D.C. Cir. 1993). Section 310(b) was amended in 1974 to eliminate the restriction on alien ownership of private radio licensees. Pub. L. 93–505, 88 Stat 1576; H.R. Report No. 93–1423, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 6305, 6307. However, the ban on licensing radio facilities to foreign governments or representatives, established in section 310(a), still applies to all licensees.

[6] Notice, 8 FCC Rcd at 8002–03 ¶ 77.

[7] Id. at 8003 ¶ 78.

[8] Comments of Roamer One, Inc., at 15–16 (Nov. 8, 1993); see also id. at iii–iv.

[9] Id. at 15.

[10] Id.

[11] See Notice, 8 FCC Rcd at 7990–96 ¶¶ 10–40.

[12] See paragraph 3, supra.

uncertain of whether it would be affected by section 310(b) restrictions absent a waiver, we strongly recommend that the licensee file a petition.

B. Contents of Waiver Petition

9. As noted above, section 332(c)(6) permits the Commission to grant waiver petitions only where two conditions are met. First, the waiver can only cover "the [licensee's] extent of foreign ownership interest [that has] not * * * increased above the extent which existed on May 24, 1993." Consistent with the legislative history quoted previously (see note 4, supra), we interpret this language to refer to the precise identities of persons or entities and not merely to preexisting levels of foreign ownership interests. Petitioners must therefore identify in their petitions all foreign interests in the licensee as of May 24, 1993, that would, absent a waiver, be subject to the section 310(b) restrictions and for which a waiver is sought. For instance, except as noted below, petitioners should specifically identify all foreign persons or entities holding an ownership interest in the licensee and the percentage of ownership interest of each and identify all foreign partners,[13] officers, and directors, regardless of whether they have any ownership interest. While we will not require publicly traded corporations [14] to identify each foreign stockholder in instances where this requirement would be especially onerous,[15] we note that it is the responsibility of all petitioners to ensure that all foreign ownership listed in the petition, including that held by individual stockholders, did exist as of May 24, 1993, and to retain documentation substantiating that ownership.

10. The second condition is that the waiver cannot permit any "subsequent transfer of ownership to any other person in violation of section 310(b)." We interpret "subsequent" here to mean subsequent to May 24, 1993. Petitioners must therefore certify in their petitions that the identity and percentages of each listed component of foreign ownership are unchanged since May 24, 1993, and that each listed foreign officer, director or partner continues to hold the same position. The waiver can recognize only the particular person or entity that held the ownership interest on May 24, 1993; it cannot recognize any subsequent transfers to other foreign owners or foreign officers or directors.[16] If, following the grant of a waiver in light of the above condition, a licensee wishes to transfer "grandfathered" foreign ownership interests, the waiver will remain valid (for the remaining "grandfathered" interests) only if the transfer is made to a domestic person or entity.[17] The same is true for "grandfathered" partners, officers, and directors.

C. Effective Date of Section 310(b) Restrictions

11. Roamer One appears to object to our statement in the *Notice* that "all reclassifiable private licensees are *immediately* subject to the foreign ownership restrictions on common carriers by section 310(b)." [18] As noted above, Roamer One contends that, prior to the completion of this rule making proceeding, the Commission should not impose alien ownership restrictions on private radio licensees who are unlikely to be classified as CMRS providers. We agree that the restrictions in section 310(b) would only apply to licensees that are actually reclassified pursuant to the statute and its implementation in this rule making. Section 310(b) does not and will not apply to private land mobile radio licensees who will not be reclassified as CMRS providers. On the other hand, the statute does require immediate enforcement of section 310(b) for private land mobile providers that are reclassified as CMRS. Section 6002(c)(2)(B) of the Budget Act states:

> [A]ny private land mobile service provided by any person before [the Budget Act's] date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, *except for purposes of section 332(c)(6) of [the Communications Act]*, be treated as a private mobile service until 3 years after such date of enactment.

Budget Act, section 6002(c)(2)(B) (emphasis added). Although other common carrier regulation may not apply to some licensees for 3 years, unless a licensee timely files and is granted a waiver pursuant to section 332(c)(6), section 310(b) will apply immediately upon the effective date of our rules reclassifying the licensee's service as CMRS. Accordingly, as stated above, licensees that may be reclassified should file a timely waiver request to grandfather any foreign ownership or other interest that existed as of May 24, 1993, and that might be affected by the application of section 310(b).

*V. Petitioning Procedure*

12. In light of the above, we adopt the following petitioning procedure. First, petitions should be in an informal, letter format, and must contain the caption "COMMERCIAL MOBILE RADIO SERVICE FOREIGN OWNERSHIP WAIVER PETITION." Petitions must clearly specify the licensee's name, radio service, call sign(s), station address(es) or geographical location(s), and contact person with telephone number. Petitions must specifically request a waiver of section 310(b), identify the particular subsection(s) of section 310(b) for which the waiver is requested, and state that the waiver is sought under section 332(c)(6). The original copy of the waiver petition must be signed by the licensee,[19] and this signature will be taken to certify that all statements made in the petition are true, complete, correct, and made in good faith.

13. In addition, as proposed in the Notice, petitions must:

(1) identify by name,[20] as of May 24, 1993, all foreign persons or other entities holding ownership interests in the licensee, directly or indirectly, that would, absent a waiver, not be permitted to hold such interests under section 310(b), and for which a waiver is

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[13] Petitioners must list all foreign partners regardless of whether they are general or limited partners, except that petitioners need not list a limited partner (1) whose level of ownership interest in the licensee does not exceed the level allowed by section 310(b), and (2) who is "insulated" from the management and control of the partnership. See, e.g., Wilner and Scheiner, supra, 103 FCC 2d at 517 n. 31, 520 n. 43; Attribution of Ownership Interests, Memorandum Opinion and Order in MM Docket No. 83–46, 58 RR 2d 604, 619–20 ¶¶ 48–50 (1985).

[14] For a definition of such corporations, see First Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket Nos. 90–6, 85–388, 6 FCC Rcd 6185, 6213 ¶ 63 (1991).

[15] See, e.g., Advanced Mobile Phone Inc., 54 RR 2d 354, 362 ¶ 29 (Com. Car. Bur. 1983) (applicant demonstrated sufficient compliance with the requirements of FCC Form 401 by indicating the percentage of its common stock held or voted by aliens, and by listing the identities of its ten largest stockholders and stating that none of them was an alien, and would not be required to circulate a questionnaire to all of its stockholders). The burden will be on any entity claiming such an onerous burden to explain why identifying individual shareholders would be extraordinarily burdensome.

[16] See note 4, supra. Thus, transfers to aliens that occurred after May 24 are not covered by the grandfathering provisions of the Budget Act even if they occurred before the Budget Act was enacted on August 10, 1993. Where such a transfer is found to create an ownership interest in violation of section 310(b), the licensee will be required to comply with section 310(b) with respect to that interest, regardless of whether alien ownership in the licensee that existed prior to May 24 is grandfathered.

[17] Licensees seeking to transfer their ownership or control would also be required to comply with section 310(d) of the Communications Act, 47 U.S.C. 310(d), and with applicable Commission rules.

[18] Notice, 8 FCC Rcd at 8002 ¶ 76 (emphasis added).

[19] See Section 1.913 of the Commission's Rules, 47 CFR 1.913.

[20] As noted previously, publicly traded corporations are not required to identify all individual stockholders when to do so would constitute an especially onerous burden. See notes 14–15, supra, and accompanying text.

sought; likewise, petitions must identify similarly situated foreign partners, officers, or directors of the licensee, regardless of whether they have any ownership interest in the licensee;

(2) as applicable, as of May 24, 1993, identify the following for each person or other entity (including officers, directors and partners) identified in (1) above: residence, citizenship, office or directorship held, number of shares or nature of partnership interests, number of votes, and percentage of votes; also, if the entity is other than an individual, petitions must also identify the name, address, and citizenship of the natural person authorized to vote the stock; and

(3) Answer the following:

(a) Have the ownership and other interests listed pursuant to (1) and (2) above remained the same since May 24, 1993?

(b) Have the officers, directors or partners continued to retain their positions since May 24, 1993?

If the answer to (a) or (b) is "No," please explain.

14. Petitioners must also certify that, in the case of an individual petitioner, he or she is not subject to a denial of federal benefits, that includes FCC benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. section 862, or, in the case of a non-individual petitioner, (e.g., corporation, partnership, or other unincorporated association), no party to the application is subject to a denial of federal benefits, that includes FCC benefits, pursuant to that section. For the definition of a "party" for these purposes, see 47 CFR 1.2002(b).

15. The Commission has no authority to extend the Congressionally mandated deadline date, so it is imperative that waiver petitions be filed on time. To be timely received, petitions must, by February 10, 1994, be either (1) hand-delivered to the offices of the FCC in Gettysburg, Pennsylvania, at the address below, or (2) received through the U.S. Mail or other mail delivery service at the address below.

Federal Communications Commission, Attn: CMRS Foreign Ownership Waiver Petition, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325—7245.

Licensees should file one original and two copies. These petitions do not require a filing fee.

*VI. Final Regulatory Flexibility Analysis*

16. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final analysis is as follows:

A. Need for, and Purpose of, This Action

As a result of recent legislation, certain private land mobile radio licensees will be reclassified as commercial mobile radio service licensees and will be subject to foreign ownership restrictions within the Communications Act of 1934, as amended. This present First Report and Order describes the procedure by which such licensees may file a waiver petition with the Commission to request retention of existing foreign ownership that would otherwise not be permitted.

B. Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

In regard to the foreign ownership issue addressed by this First Report and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered

No significant alternatives were considered.

*VII. Ordering Clauses*

17. Accordingly, *It is Ordered That,* pursuant to the authority of sections 4(i), 303(r), and 332(c)(6) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(c)(6), this First Report and Order is adopted, effective upon publication in the **Federal Register.**[21]

18. For further information on filing a waiver petition, contact the Private Radio Bureau, Licensing Division, Consumer Assistance Branch, (717) 337–1212. For further information regarding this First Report and Order, contact Carmen Cintron at (202) 632–6450 (Common Carrier Bureau, Mobile Services Division) or Eric Malinen at (202) 632–6497 (Private Radio Bureau, Land Mobile and Microwave Division).

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–511 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

[21] In light of the statutory deadline for filing petitions, we find that there is good cause to make this action effective immediately upon publication in the **Federal Register**.

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## DEPARTMENT OF DEFENSE

### 48 CFR Parts 225 and 252

### Defense Federal Acquisition Regulation Supplement; North American Free Trade Agreement Implementation Act

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to integrate Buy American Act and Balance of Payments Program waivers necessitated by the North American Free Trade Agreement Implementation Act with similar existing Department of Defense waivers for countries with memoranda of understanding or other international agreements.

**DATES:** *Effective Date:* January 1, 1994. This rule applies to solicitations issued on or after January 1, 1994.

*Comment Date:* Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before February 9, 1994, to be considered in the formulation of a final rule. Please cite DFARS Case 93–D310 in all correspondence related to this issue.

**ADDRESSES:** Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, OUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Alyce Sullivan, (703) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Chapter Ten of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993 requires the United States, Canada, and Mexico to eliminate "buy national" restrictions on non-defense related purchases by the federal governments. NAFTA is being implemented in the Federal Acquisition Regulation but also requires revision of the DFARS to integrate Buy American Act and Balance of Payments Program waivers necessitated by NAFTA with similar existing Department of Defense waivers for countries with memoranda of understanding or other international agreements.

**B. Regulatory Flexibility Act**

The interim rule may 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 the rule waives the Buy American Act for certain Mexican and Canadian products. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments are invited. Comments from

small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93–610 in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act applies because the provisions at 252.225–7006, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, and 252.225–7035, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate, require offerors to list the line item number and country of origin for any end product other than a domestic end product. Accordingly, a request for clearance of a new information collection requirement concerning the North American Free Trade Agreement Act is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because the North American Free Trade Agreement Implementation Act, signed into law on December 8, 1993, becomes effective on January 1, 1994. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

**List of Subjects in 48 CFR Parts 225 and 252**

Government procurement.

Claudia L. Naugle,

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and FAR subpart 1.3.

## PART 225—FOREIGN ACQUISITION

2. Section 225.000–70 is amended by revising paragraph (m) to read as follows:

**225.000–70 Definitions.**

As used in this part—

* * * * *

(m) *U.S. made end product* is defined in the clause at 252.225–7007, Trade Agreements.

3. Section 225.000–71 is amended by revising paragraphs (a)(2) and (c)(1) to read as follows:

**225.000–71 General guidelines.**

* * * * *

(a) *Statutory or policy restrictions.*

* * * * *

(2) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

* * * * *

(c) *Trade agreements.* (1) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).

* * * * *

4. Section 225.105 (3) and (5)(ii)(A) are revised to read as follows:

**225.105 Evaluating offers.**

* * * * *

(3) Treat offers of eligible products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. (See Example 4 of Table 25–1, Evaluation.)

* * * * *

(5) * * *

(ii) * * *

(A) "U.S. made end product" under trade agreements;

* * * * *

5. Section 225.109(a) is revised to read as follows:

**225.109 Solicitation provisions and contract clauses.**

(a) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program, unless the solicitation includes either the clause at 252.225–7007, Trade Agreements Act, or the clause at 252.225–7036, North American Free Trade Agreements Implementation Act.

* * * * *

6. Section 225.401 is revised to read as follows:

**225.401 Definitions.**

*Eligible product* means, instead of the definition at FAR 25.401, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.403.70.

7. Section 225.402 is amended by revising paragraphs (c) (i) and (ii) to read as follows:

**225.402 Policy.**

* * * * *

(c)(i) Except as provided in paragraph (c)(ii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin or qualifying country end products (see 225.872–1).

(ii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(ii) (A), (B), and (C) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

* * * * *

8. Section 225.403–70 is amended by revising the introductory paragraph and by removing Federal Supply Group (FSG) 52, and the Category/Description of Measuring tools, to read as follows:

**225.403–70 Products subject to trade agreement acts.**

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. As noted in FAR 25.401, Caribbean Basin country end products are limited to those end products which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list of products has been annotated to indicate those products which, due to this limitation, are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

* * * * *

**225.407 [Amended]**

9. Section 225.407 is redesignated as 225.408; paragraphs (a)(1) and (a)(2)(A) of newly designated section 225.408 are amended by removing the word "Act" wherever it appears after "Trade Agreements"; and new paragraphs (a)(3) and (4) are added, to read as follows:

**225.408 Solicitation provision and contract clause.**

(a) * * *

(3) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation

Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7036, North American Free Trade Agreement Implementation Act.

(4) (A) Use the clause at 252.225–7036, North American Free Trade Agreement Implementation Act, instead of the clause at FAR 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B) Use the clause in all solicitations and contracts for the items listed at 225.403–70, when the estimated value is $50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(C) Application of the procedures in 225.402(a) and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

10. Section 225.602(3)(ii) is revised to read as follows:

## Subpart 225.6—Customs and Duties

**225.602 Policy.**

* * * * *

(3) * * *

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreements Act or NAFTA; and

* * * * *

11. Section 225.603 is amended to add new paragraph (1)(ii)(C), and to revise paragraph (1)(iii)(C)(*3*) to read as follows:

**225.603 Procedures.**

* * * * *

(1) * * *

(ii) * * *

(C) 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies; or

* * * * *

(iii) * * *

(C) * * *

(*3*) Such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer. In any case, follow the procedures required by the clauses in FAR 52.225–10, Duty-Free Entry, and 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supples, and 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies, to the extent practicable.

* * * * *

12. Section 225.605–70 is amended by redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

**225.605–70 Additional solicitation provisions and contract clauses.**

* * * * *

(c) Use the clause at 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies, in all solicitations and contracts for supplies and services when the clause at FAR 52.225–10, Duty-Free Entry, is not used and NAFTA applies (see 225.403–70).

* * * * *

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 252.225–7001 is amended by revising the clause heading and paragraph (c) to read as follows:

**252.225–7001 Buy American Act and Balance of Payments Program.**

As prescribed in 225.109(d), use the following clause:

**Buy American Act and Balance of Payments Program (January 1994)**

* * * * *

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act and Balance of Payments Certificate or the Buy American Act—Trade Agreements—Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

* * * * *

(End of clause)

14. Section 252.225–7006 is amended by revising the section heading, the clause title, and paragraph (a); paragraph (b) is revised; paragraph (c)(2)(v) is redesignated as paragraph (vi) and reprinted for the convenience of the reader; and a new paragraph (c)(2)(v) is added, to read as follows:

**252.225–7006 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.**

As prescribed in 225.408(a)(1), use the following provision:

**Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Jan. 1994)**

(a) *Definitions.*

*Caribbean Basin country end product, designated country end product, domestic end product, NAFTA country end product, nondesignated country end product, qualifying country end product,* and *U.S. made end product* have the meanings given in the Trade Agreements or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.*

Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products.

(c) *Certifications.* * * *

(v) The Offeror certifies that the following supplies qualify as NAFTA country end products: *(insert line item number) (insert country of origin).*

(vi) The Offeror certifies that the following supplies are other nondesignated country end products. *(insert line item number) (insert country of origin).* (End of provision)

15. Section 252.225–7007 is amended by revising the section heading and clause title; to revise the introductory language; to redesignate current paragraphs (a)(5), (6), and (7) as (a)(7), (8), and (9) respectively and add new paragraphs (a)(5) and (6); to revise newly designated paragraph (a)(9)(ii); and to revise paragraphs (b), (c), and (d), to read as follows:

**252.225–7007 Trade Agreements.**

As prescribed in 225.408(a)(2), use the following clause:

**Trade Agreements (Jan. 1994)**

(a) * * *

(5) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(6) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

* * * * *

(9) * * *

* * * * *

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and distinct article of

commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the North American Free Trade Agreement Implementation Act of 1993, and the Caribbean Basin Initiative by providing a preference for U.S. made end products and designated country end products over nondesignated country end products, except nondesignated country end products which are qualifying country end products, NAFTA country end products, or Caribbean Basin end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision.

(1) Offerors may not supply a nondesignated country end product unless it is a qualifying country end product, NAFTA country end product, or Caribbean Basin country end product, or a national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(2) An offer certifying that a qualifying country end product, a designated country end product, a NAFTA country end product, or a Caribbean Basin country end product will be supplied, requires the Contractor to supply a qualifying country end product, a designated country end product, a NAFTA country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include customer fees or duty. (End of clause)

16. Section 252.225–7010 is amended by revising the introductory text to read as follows:

**252.225–7010 Duty Free Entry—Additional Provisions.**

As prescribed in 225.605–70(d), use the following clause:

* * * * *

17. A new section 252.225–7035 is added to read as follows:

**252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.**

As prescribed in 225.408(a)(3), use the following provision:

**Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (Jan. 1994)**

(a) *Definitions.*

*Domestic end product, qualifying country end product,* and *U.S. made end product* have the meanings given in the North American Free Trade Agreement Implementation Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.*

Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, or NAFTA country end products over other end products.

(c) *Certifications.*

(1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify and certify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as "U.S. made end products" but do not meet the definition of "domestic end product": *(insert line item number).*

(ii) The Offeror certifies that the following supplies are qualifying country end products: *(insert line item number) (insert country of origin).*

(iii) The Offeror certifies that the following supplies qualify as NAFTA country end products: *(insert line item number (insert country of origin).*

(iv) The Offeror certifies that the following supplies are other non-NAFTA country end products: *(insert line item number) (insert country of origin).* (End of provision)

18. A new section 252.225–7036 is added to read as follows:

**252.225–7036 North American Free Trade Agreement Implementation Act.**

As prescribed in 225.408(a)(4), use the following clause:

**North American Free Trade Agreement Implementation Act (Jan. 1994)**

(a) *Definitions.*

(1) *Components, domestic end product, end product, nonqualifying country, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(2) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(3) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(4) *Non-NAFTA country end product* means any end product which is not a U.S. made end product or a NAFTA country end product.

(5) *United States* means the United States, its designated possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(6) *U.S. made end product* means an article which is—

(i) Wholly the growth, product or manufacture of the United States, or

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the North American Free Trade Agreement Implementation Act of 1993 by providing a preference for U.S. made end products and NAFTA country end products over non-NAFTA country end products, except non-NAFTA country end products which are qualifying country end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a U.S. made end produce.

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (iv) of the Buy American Act—North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. (End of clause)

19. A new section 252.225–7037 is added to read as follows:

**252.225-7037 Duty-Free Entry—NAFTA Country End Products and Supplies.**

As prescribed in 225.605-70(c), use the following clause:

**Duty-Free Entry—NAFTA Country End Products and Supplies (Jan. 1994)**

(a) *Definitions.*

*NAFTA country* and *NAFTA country end products* have the meaning given in the North American Free Trade Agreement Implementation Act clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for NAFTA country end products.

(d) The Contractor warrants that—

(1) All NAFTA country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of NAFTA country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv) The notation: *United States Government, Department of Defense Duty-Free Entry* to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Area Operations (DCMAO) New York, ATTN: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates. (Note: This notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plan, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCMAO, NY, for execution of the duty-free certificate.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(g) *Prepartion of customs forms.*

(1) Except for shipments consigned to a military installation, the contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico, Submit the completed customs forms to the District Director of Customs with a copy to DCMAO NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry:

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "United States Government, Department of Defense;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of NAFTA country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for NAFTA supplies;

(7) Total dollar value of the subcontract for NAFTA supplies;

(8) Expiration date of the subcontract for NAFTA supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of NAFTA supplies as follows: I certify that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(j) This clause does not apply to purchases of NAFTA country supplies in connection with this contract if—

(1) The NAFTA country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts. (End of clause)

[FR Doc. 94-447 Filed 1-7-94; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

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

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 701

RIN 0560–AD08

### Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Agricultural Stabilization and Conservation Service (ASCS) regulations governing the Agricultural Conservation Program (ACP), Emergency Conservation Program (ECP), and the Forestry Incentives Program (FIP). This proposed rule incorporates amendments made to the ACP, ECP, and FIP; revises procedures to reflect current policies; and incorporates the Water Quality Incentive Projects (WQIP) into the ACP.

DATES: Comments must be received on or before February 9, 1994 in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Conservation and Environmental Protection Division, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415. All written submissions made pursuant to this rule will be available for further inspection in room 4714, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation and Environmental Activities Branch, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7333.

SUPPLEMENTARY INFORMATION:

### Paperwork Reduction Act

Information collection requirements contained in the current regulation at 7 CFR part 701 have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560–0082. ASCS will resubmit these requirements to OMB for review in light of the amendments set forth in this proposed rule.

### Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this proposed rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the Presidents's priorities, or principles set forth in Executive Order 12866.

### Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Agricultural Conservation Program (ACP)—10.063; Emergency Conservation Program (ECP)—10.054; and Forestry Incentives Program (FIP)—10.064.

### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since ASCS 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 this rule.

### Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

### Executive Order 12372

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

### Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and preempt State laws to the extent they are not consistent with the provisions of this proposed rule. Before any judicial action may be brought regarding the provisions of this proposed rule, the administrative appeal provisions of 7 CFR part 780 must be exhausted.

### Background

The ACP is authorized generally by Sections 7–17 of the Soil Conservation and Domestic Allotment Act as amended (the Act) (16 U.S.C. 22590g *et seq.*). The program provides financial and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation, water quality, and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, maintain water quality, or prevent increased cost of production.

A WQIP is authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 3831 *et seq.*). However, Congress funded WQIP as a part of the ACP. Accordingly, the WQIP is a voluntary incentive program conducted pursuant to the Act to develop and implement agricultural water quality protection plans on up to 10 million acres.

The ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*). This program is designed to provide cost-share

assistance for emergency restoration work to meet only the critical needs of agricultural producers due to drought or other natural disaster.

The FIP is authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103) and is designed to increase the nation's supply of timber products from private nonindustrial forest lands. The purpose of FIP is to encourage private landowners to apply forestry practices that will provide for afforestation of suitable open lands and reforestation of cut-over or other nonstocked forest lands and to encourage intensive multi-purpose forest resource management and protection so as to provide for cost-effective timber production and other related forest resources needs.

The regulation governing these programs is being restructured and simplified to provide an easier and more effective structure for the use of this regulation. The ACP is being revised to:

(1) Incorporate several amendments that have been published in the **Federal Register**;

(2) Incorporate the WQIP;

(3) Clarify that producers wanting to participate with practice WP4, Agricultural Waste Control Facilities, must have been in operation for at least 5 years;

(4) Adjust the LTA payment limitation to reflect that the payment limitation shall be based on the number of years remaining on the LTA; and

(5) reflect that payments shall be based on attribution. The ECP is being revised to:

(1) Reflect that the Disaster Assistance Act of 1989 (16 U.S.C. 2202) authorized assistance for confined livestock operations; and

(2) Define land subject to frequent damage which is ineligible for cost-share assistance.

The FIP is being restructured for clarity.

Currently, ACP practices are prioritized locally by county Agricultural Stabilization and Conservation committees to ensure that the most severe conservation and environmental problems are addressed. However, this county committee prioritization process has been criticized as not addressing the most severe conservation and environmental problems. Therefore, comments are requested regarding the manner in which ACP practices and allocation of funds could be prioritized to achieve greater conservation and environmental benefits at the least Federal cost. Although not exclusive, such considerations for prioritization may be based on temporary versus longer-term practices or type of conservation or environmental benefit. Further, consideration should be given to whether priorities should be established by the National, State, or county Agricultural Stabilization and Conservation Service offices. Moreover, for ACP, ECP and FIP, comments are requested on ways in which the programs can best be targeted in order to ensure that public benefits, rather than private benefits are maximized with Federal expenditures. For example, the use of ACP for temporary practices may not provide large public benefits.

Comments are requested as to whether funds should be targeted toward designated areas with impaired water quality. Similarly, cost-share practices could be selected for a region where they will contribute to an identified problem. Thus, nutrient management practices would be designated as a cost-share option in areas where nutrients have been identified as a water quality problem.

### List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs—agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR Part 701 is proposed to be revised to read as follows:

## PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

### Subpart A—General Provisions

Sec.
701.1 Background.
701.2 Administration.
701.3 Definitions.
701.4 Restriction on program eligibility.
701.5 Practice specifications.
701.6 Responsibility for referred technical phases of practices.
701.7 Items of costs on which rates of cost-share assistance may be based.
701.8 Repair, upkeep, and maintenance of practices.
701.9 Public benefits when installing practices.
701.10 Payments for uncompleted practices.
701.11 Practices involving the establishment or improvement of vegetative cover.
701.12 Failure to meet minimum requirements or failure to comply fully with program provisions.
701.13 Practices carried out with aid from ineligible persons.
701.14 Division of cost-share assistance.
701.15 Applying cost-share assistance limitations.
701.16 Persons eligible to file application for payment of cost-share assistance.
701.17 Time and manner of filing application and required information.
701.18 Death, incompetency, or disappearance.
701.19 Appeals.
701.20 Performance based on advice or action of COC or STC.
701.21 Compliance with regulatory measures.
701.22 Maintenance and use of practice.
701.23 Actions defeating purpose of program.
701.24 Depriving others of cost-share assistance.
701.25 Filing false claims.
701.26 Cost-share assistance not subject to claims.
701.27 Assignments.
701.28 Environmental considerations.
701.29 Information collection requirements.
701.30–701.99 [Reserved]

### Subpart B—Agricultural Conservation Program

701.100 Program objective.
701.101 State funds.
701.102 County funds.
701.103 Availability of funds.
701.104 Eligible person.
701.105 Eligible land.
701.106 Conservation practices.
701.107 County programs.
701.108 State programs.
701.109 Selection of practices.
701.110 Levels and rates of cost-share assistance.
701.111 Starting practices.
701.112 Method of approval.
701.113 Long-term agreements.
701.114 Replacement, enlargement, or restoration.
701.115 Pooling agreements.
701.116 Special provisions for low-income farmers and ranchers.
701.117 Maximum cost-share assistance limitation.
701.118 Completion of practices.
701.119 Time of filing payment application.
701.120 Water Quality Incentive Projects.
701.121–701.199 [Reserved]

### Subpart C—Emergency Conservation Program

701.200 Program objective.
701.201 Program availability.
701.202 Eligibility of person and land.
701.203 Emergency Conservation Program practices.
701.204 Practice approval.
701.205 Extent of cost-share assistance.
701.206 Eligible costs.
701.207 Filing requests.
701.208 Approving requests.
701.209 Pooling agreements.
701.210 Payment approval.
701.211–701.299 [Reserved]

### Subpart D—Forestry Incentives Program

701.300 Program objective.
701.301 Designated counties.
701.302 Eligible person, land, and ownerships.
701.303 Program funds.
701.304 Eligible practices and cost-share assistance requirements.
701.305 The national FIP.

701.306 Development of State FIP.
701.307 Development of county FIP.
701.308 Adaptation of practices.
701.309 Levels and rates of cost-share assistance.
701.310 Prior approval for cost-share assistance.
701.311 Methods of approval.
701.312 Long-term agreements.
701.313 Restoration of practices.
701.314 FIP maximum cost-share assistance limitations.
701.315 Completion of practice.
701.316 Time of filing payment application.
701.317–701.399 [Reserved]

Authority: 16 U.S.C. 590d, 590g–590o, 590p(a), 590q, 1501–1510, 1606, 2101–2111, 2201–2205, 3831; 48 U.S.C. 1469d(c).

## Subpart A—General Provisions

### § 701.1 Background.

(a) Through the conservation and environmental programs administered by the Department of Agriculture, the Federal Government will share with farmers, ranchers, and other eligible private landowners in the United States and the applicable territories and possessions of the United States, the cost of performing:

(1) Approved soil and water conservation, water quality, and pollution abatement practices including related wildlife conservation practices.

(2) Emergency conservation measures.

(3) Approved forestry practices.

(b) The Federal Government will provide incentive payments to farmers, ranchers, and other private landowners in applicable areas of the United States to establish Water Quality Incentive Projects (WQIP) practices.

(c) Cost-share assistance or incentive payments may be made available to eligible program participants by the Agricultural Stabilization and Conservation Service (ASCS) for:

(1) Soil and water conservation, water quality, and pollution abatement practices under the Agricultural Conservation Program (ACP) which includes WQIP.

(2) Practices to correct damage to land or conservation practices caused by natural disaster under the Emergency Conservation Program (ECP).

(3) Installation of water conservation measures under the ECP during periods of severe drought.

(4) Forestry practices under the ACP and the Forestry Incentives Program (FIP).

(d) Information on the practices for which costs will be shared, the exact specifications and rates of cost-share assistance for such practices, and the eligibility requirements for participating in the programs, may be obtained from the County Agricultural Stabilization and Conservation (ASC) Committee (county committee) for the county in which the farm, ranch, or other eligible land is administered or from the State ASC committee (State committee) for the State in which such county is located.

(e) The provisions at subpart A apply to the programs specified in subparts B through D.

### § 701.2 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, ASCS and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (State and county ASC committees).

(b) State and county ASC committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State ASC committee shall take any action required by these regulations which has not been taken by the county ASC committee. The State ASC committee shall also:

(1) Correct, or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with the regulations of this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county ASC committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the regulations of this part or from reversing or modifying any determination made by a State or county ASC committee.

### § 701.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

*ACP* means the Agricultural Conservation Program.

*Applicant* means a person who submits to ASCS an intention to participate in a cost-share program.

*ASCS* means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

*Conservation District (CD)* means a subdivision of a State organized pursuant to an applicable State Conservation District law or in instances where a CD does not exist, the State Conservationist of the Soil Conservation Service.

*Cost-share payment* means the payment made by ASCS to producers who complete an approved program practice.

*County committee (COC)* means the Agricultural Stabilization and Conservation county committee of the ASCS.

*County Conservation Review Group (CCRG)* consists of the county ASC committee; the county extension agent; a Soil Conservation Service (SCS) representative; a Forest Service (FS) representative; a Farmers Home Administration representative; a representative of the State forestry agency or its equivalent, when the representative accepts an invitation to be a member of the group; and a representative of the CD in the county, where the governing board of the district accepts an invitation to designate a representative (if there is more than one district in the county, the governing boards of the districts may jointly designate one person to represent all the districts). The CCRG shall have the responsibilities as provided for in §§ 701.107 and 701.307.

*CPO* means the conservation plan of operations developed for the participant by the SCS.

*Deputy Administrator* means the Deputy Administrator, State and County Operations, or designee, of the ASCS.

*ECP* means the Emergency Conservation Program.

*Eligible person* means a person who meets all program eligibility requirements and is eligible to participate and receive assistance.

*Farm or ranch* means that area of land considered as a farm under the regulations governing reconstitution of farms, allotments, and bases, at part 719 of this chapter, as amended, for ACP, ECP, and WQIP, and, for the FIP, farm or ranch means eligible land (or ownership tracts) as provided in § 701.302.

*FIP* means the Forestry Incentives Program.

*FS* means the Forest Service of the United States Department of Agriculture.

*Incentive payment* means, unless the context indicates otherwise, the incentive payment specified in the WQIP agreement which, subject to the availability of funds, is made to a participant to compensate such participant who implemented conservation practices or management changes that reduce agricultural pollutants.

*National Conservation Review Group (NCRG)* consists of representatives of

the ASCS; SCS; U.S. Forest Service; Extension Service; Economic Research Service; Farmers Home Administration; Agricultural Research Service; Office of General Counsel, U.S. Department of Agriculture; Office of Budget, Planning and Analysis, U.S. Department of Agriculture; Environmental Protection Agency; Office of Management and Budget; and Fish and Wildlife Service, U.S. Department of the Interior (DOI). The NCRG is responsible for recommending changes to the Administrator, ASCS, in program administrative procedures and policy guidelines, and evaluations of program effectiveness and operating arrangements.

*Participant* means an owner, operator, landlord, tenant, or sharecropper of a farm or ranch who shares in the cost of the practice and who will receive cost-share or incentive assistance.

*Program year* means the Federal fiscal year for accounting purposes.

*SCS* means the Soil Conservation Service of the United States Department of Agriculture.

*State* means any one State of the United States, Puerto Rico, the Virgin Islands, and:

(1) In the case of the ACP and ECP, Guam, the American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(2) In the case of the FIP, Guam, the American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the territories and possessions of the United States.

*State committee (STC)* means the ASCS State Agricultural Stabilization and Conservation Committee.

*State Conservation Review Group (SCRG)* consists of the STC, the State Director of Extension; the State Conservationist of the SCS; a representative of the U.S. Forest Service; a representative of the Farmers Home Administration; a representative of the State forestry agency, or its equivalent, when the representative accepts an invitation to be a member of the group; a representative of the State Soil Conservation Committee, or its equivalent, when the representative accepts an invitation to be a member of the group; and a representative of the State water quality agency, or its equivalent when it accepts an invitation to be a member of the group. The SCRG has the responsibility provided for in § 701.108.

*State Forestry Committee*, or its equivalent, consists of the State forester or equivalent State official, who serves as chairperson; and a representative at the State level of the following USDA agencies: ASCS; FS; Extension Service; Farmers Home Administration; and SCS. At the discretion of the State Forestry Committee, State and local interests may also be involved. The function of the State Forestry Committee is to coordinate forestry budget proposals, agency roles in education, technical assistance, technology transfers, and forestry incentives.

*WQIP* means the Water Quality Incentive Projects authorized under the ACP.

*WQIP Agreement* means the program agreement including the applicable water quality resource management plan entered into between ASCS and the participant. Such agreement shall set forth the terms and conditions for participation in the WQIP pursuant to this part.

**§ 701.4 Restriction on program eligibility.**

The regulations in part 796 of this chapter prohibiting the making of payments to program participants who harvest or knowingly permit to be harvested for illegal use, marijuana or other such prohibited drug-producing plants on any part of the land owned or controlled by such program participants are applicable to these programs.

**§ 701.5 Practice specifications.**

(a) Minimum specifications that practices must satisfy to be eligible for cost-share assistance shall be set forth in the county program within the authority established by the STC and Deputy Administrator, State and County Operations (DASCO) or incorporated by specific reference to a standard publication or other written document containing such specifications.

(b) Practice specifications shall represent the minimum levels of performance needed in order for the practice to be effective in meeting the program objective. Cost-share assistance shall be limited to these minimum levels.

**§ 701.6 Responsibility for referred technical phases of practices.**

The SCS and the FS are responsible for technical phases of practices as assigned and such assignment will be specified in State and county programs.

(a) The SCS State Conservationist may use the expertise from private consultants, State, or Federal agencies in performing the assigned responsibilities if SCS certifies that assigned practices are completed properly. No responsibilities will be assigned for counties when DASCO and the Chief, SCS, determine that it would not be administratively practicable for the SCS to discharge such responsibilities. In such counties, these responsibilities shall be assumed by COC's. The SCS may utilize resources of the State forestry agencies in performing assigned responsibilities for practices involving the establishment of windbreaks or shelterbelts on farmland to prevent wind erosion.

(b) The FS is responsible for the technical phases of practices or components of practices involving the planting of trees for forestry purposes and those involving the improving or protecting of a stand of forest trees as specified in State and county programs. The FS may use the assistance of private consultants, State, or Federal agencies in performing these assigned responsibilities if FS certifies that assigned practices are completed properly; however, services of State forestry agencies will be used to the extent that such services are available.

**§ 701.7 Items of cost on which rates of cost-share assistance may be based.**

Except as otherwise provided by ASCS, the cost of any direct and significant factor in the performance of a practice may be considered in establishing the rate of cost-share assistance for the practice.

**§ 701.8 Repair, upkeep, and maintenance of practices.**

Cost-share assistance shall not be authorized for repairs or for normal upkeep or maintenance of any practice.

**§ 701.9 Public benefits when installing practices.**

Persons responsible for any aspect of performing practices shall install the practices to promote public benefits by:

(a) Improving or preserving environmental quality and ecological balance by preventing or abating pollution and other environmental degradation;

(b) Benefiting the community by such means as preserving open space or enhancing the appearance of the area;

(c) Benefiting wildlife and other desirable life forms;

(d) Preserving historic, archeological, or scenic sites, wetlands, ecologically critical areas, and prime farmlands;

(e) Avoiding the creation of hazards to persons or animals; and

(f) Avoiding actions that may adversely affect an endangered or threatened species or flood plains.

**§ 701.10 Payments for uncompleted practices.**

Cost-share assistance approved under these programs shall not be considered earned until all components of the approved practice are completed according to applicable specifications

and program provisions. Cost-share assistance for completed components of an approved practice may be paid only on the condition that the eligible participant will complete the remaining components of the practice within the time prescribed by the COC regardless of whether cost-share assistance is offered for them unless the COC subsequently determines they are prevented from doing so because of reasons beyond their control.

**§ 701.11 Practices involving the establishment or improvement of vegetative cover.**

(a) Costs may be shared even though an adequate stand is not established, for practices involving the establishment or improvement of vegetative cover, including trees, if the COC determines, according to standards approved by the STC, that the practice was carried out in a manner which could normally result in the establishment of an adequate stand and that failure to establish an adequate stand was due to weather or other conditions beyond the control of the participant. The COC may require, as a condition of cost-share assistance in such cases, that the area be reseeded or replanted or that other needed protective measures be performed. Cost-share assistance in such cases may also be approved for repeat applications of measures previously performed or for additional eligible measures. Cost-share assistance for such measures may be approved to the extent such measures are needed to ensure an adequate stand even though the measures may be less than that required by the applicable practice wording for initial approvals.

(b) In the case of FIP, replanting of trees is required where the landowner received cost-share assistance for site preparation.

**§ 701.12 Failure to meet minimum requirements or failure to comply fully with program provisions.**

(a) Notwithstanding other provisions of these programs, costs may be shared for performance actually rendered even though the minimum requirements for a practice are not satisfied, if the participant establishes to the satisfaction of the COC and the county representative of any other agency having responsibility for technical phases of the practice that a reasonable effort was made to satisfy the minimum requirements and that the practice as performed adequately solves the need for the practice.

(b) Notwithstanding the provisions in paragraph (a) of this section, the Deputy Administrator may in accordance with part 791 of this chapter authorize relief when a participant acting in good faith failed to fully comply with the program provisions.

**§ 701.13 Practices carried out with aid from ineligible persons.**

Financial assistance which is made available, or will be made available, to a program participant from a person ineligible for cost-share assistance under this part for the practice, including aid from a State or Federal agency other than aid made available under this part, shall be deducted from the program participant's total costs incurred for the practice for purposes of determining the applicant's eligible reimbursable costs under this part.

**§ 701.14 Division of cost-share assistance.**

(a) The cost-share assistance shall be credited to the participant who performed the practice. If more than one person contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those persons in the proportion that the COC determines they contributed to the performance of the practice. In making this determination, the COC shall consider the value of the labor, equipment, or material contributed by each person toward performance.

(b) The allowance by an eligible person of a credit to another eligible person in the form of an adjustment in rental, an exchange of cash or other consideration shall not be considered as a contribution to the performance of any practice, unless ASCS is satisfied that such credit is directly related to the cost of the practice. A person fully reimbursed through an adjustment in rental, an exchange of cash, or other consideration shall not be considered as having contributed to the practice performance.

**§ 701.15 Applying cost-share assistance limitations.**

(a) All or any part of cost-share assistance which otherwise would be due any participant for a program year may be withheld, or required to be refunded, if, with respect to that program year, the participant has adopted, or participated in adopting, any scheme or device designed to evade a maximum cost-share limitation.

(b) The provisions of 7 CFR 1497.109(a), which provide that payments shall be attributed to each member of an entity, shall apply in determining whether certain individuals or other entities are to be considered as separate persons for the purpose of applying any maximum payment limitations provided for in this part.

**§ 701.16 Persons eligible to file application for payment of cost-share assistance.**

Any eligible person as defined in §§ 701.104, 701.202, and 701.302, who bore a part of the cost of an approved practice, is eligible to file an application for cost-share assistance. For ACP practice WP4, Agricultural Waste Control Facilities, an eligible person is one who has been in an operation from which the agricultural waste is produced for at least 5 years.

**§ 701.17 Time and manner of filing application and required information.**

(a) Participants shall submit to the county office the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions. The time limits for submission of such information shall be established where necessary for efficient administration of the programs. Such time limits shall afford a full and fair opportunity to those eligible to submit the information within the period prescribed. At least 2 weeks notice of any general time limit prescribed shall be provided to the public.

(b) Other means of notification of program availability including radio announcements and individual notices to the person affected, shall be used to the extent practicable. Notice of such time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the person affected. Exceptions to the time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer or rancher.

**§ 701.18 Death, incompetency, or disappearance.**

In case of death, incompetency, or disappearance of any participant, any cost shares due shall be paid to the successor, determined in accordance with provisions of the regulations in part 707 of this chapter.

**§ 701.19 Appeals.**

Any person may obtain reconsideration and review of determinations affecting participation in these programs, in accordance with part 780 of this chapter.

**§ 701.20 Performance based on advice or action of COC or STC.**

Cases involving performance rendered in good faith in reliance upon action or advice of an authorized representative of a STC or COC shall be considered according to part 790 of this chapter.

**§ 701.21 Compliance with regulatory measures.**

Participants who perform practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The participant with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because such participant infringes on the rights of others or fails to comply with applicable laws or regulations.

**§ 701.22 Maintenance and use of practice.**

Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Each practice shall have an established lifespan or minimum period of time that it is expected to function as a conservation practice with proper maintenance. If ASCS determines that a practice has not been properly maintained for the established lifespan, the participant receiving the cost-share assistance shall refund all or any part of such cost-share assistance as determined appropriate by the ASC COC. Further, any agreement providing for cost-share assistance will be terminated, with respect to the land on which the practice is located, if there is voluntary loss of control of the land by the participant receiving the cost-share assistance and the person acquiring control of such land elects not to become a successor in interest to the agreement. If the agreement providing for cost-share assistance is terminated as a result of the voluntary loss of control of the land, each participant receiving cost-share assistance under that agreement shall be liable for refunding to ASCS any cost-share assistance which has been received with respect to the practice. In addition, such person shall forfeit any right to receive any further cost-share assistance with respect to the land on which the practice is located.

**§ 701.23 Actions defeating purpose of program.**

If the STC or COC determines that a participant has taken any action which tends to defeat the purposes of these programs, the participant may be required to refund all or part of any of these program payments otherwise due or paid that participant during the program year. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice carried out under a prior program year.

**§ 701.24 Depriving others of cost-share assistance.**

If the STC or COC determines that any participant has employed any scheme or device to deprive any other person of cost-share assistance, the participant may be required to refund all or part of any of these program payments otherwise due or paid that person during the program year. A scheme or device includes, but is not limited to, coercion, fraud, or misrepresentation.

**§ 701.25 Filing false claims.**

If the STC or COC determines that any person has knowingly supplied false information or filed a false claim, that person is ineligible for cost-share assistance under the program year with respect to which information or claim was filed. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out or for practices which do not meet the required specifications. Any amounts paid under these circumstances shall be refunded and any amounts otherwise due the participant shall be withheld. The withholding or refunding of cost shares will be in addition to any other penalty or liability otherwise imposed by law.

**§ 701.26 Cost-share assistance not subject to claims.**

Any cost-share assistance or portion thereof due any participant shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations issued by the Secretary governing offsets and withholdings at part 1403 of this title shall be applicable to these programs.

**§ 701.27 Assignments.**

Any participant who may be entitled to any cost-share assistance under these programs may assign the right thereto, in whole or in part, according to the regulations governing the assignment of payments at 7 CFR part 1404.

**§ 701.28 Environmental considerations.**

All actions implemented under the programs in this part shall be in compliance with regulations issued at part 799 of this chapter, which includes the procedures for complying with the National Environmental Policy Act, Floodplain Management and Wetland Protection and other environmental concerns.

**§ 701.29 Information collection requirements.**

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0082.

**§§ 701.30–701.99 [Reserved]**

## Subpart B—Agricultural Conservation Program

**§ 701.100 Program objective.**

(a) The objective of the ACP is to restore and protect the Nation's land and water resources. This objective will be accomplished through a program that considers:

(1) The need to control erosion and sedimentation from agricultural land and conserve the water resources on such land.

(2) The need to control pollution from animal wastes.

(3) The need to facilitate sound resource management systems through soil and water conservation.

(4) The need to encourage voluntary compliance by agricultural producers with Federal and State requirements to solve point and nonpoint sources of pollution.

(5) National priorities reflected in the National Environmental Policy Act of 1969, the Resource Conservation Act of 1977, and other congressional and administrative actions.

(6) The degrees to which the measures contribute to the national objective of ensuring a continuous supply of food and fiber necessary for the maintenance of a strong and healthy people and economy.

(7) The type of conservation measures needed to improve water quality.

(8) The need to improve water quality.

(b) These objectives will ensure the continued supply of food and fiber necessary for the maintenance of a strong and healthy people and economy and provide for environmental conservation or enhancement.

**§ 701.101 State funds.**

Funds available for practices to be performed under the ACP will be distributed among the States as determined by the Deputy Administrator.

**§ 701.102 County funds.**

The STC will allocate the funds available for practices among the counties within the State consistent with the ACP's objective, and will give particular consideration to the furtherance of special projects, watershed conservation projects,

resource conservation development projects, approved State water quality plans, and other conservation and pollution abatement projects sponsored locally.

**§ 701.103 Availability of funds.**

(a) The paying of the cost-share assistance provided herein is contingent upon such appropriation as the Congress may provide for such purpose; and the amounts of such cost shares shall be within the limits authorized by such appropriation.

(b) Funds available for the ACP may be made available as needed for practices to be performed under the Naval Stores Conservation Program, according to instructions issued by the Deputy Administrator.

**§ 701.104 Eligible person.**

An eligible person is a farmer or rancher who as an individual, partnership, association, corporation, estate, trust, other business enterprise, or other legal entity (excluding districts which have taxing authority, Federal agencies, States and State agencies, including political subdivisions of a State) and, as an owner, landlord, tenant, or sharecropper, participates or has an interest in the operation of a farm or ranch for which cost share assistance has been requested.

**§ 701.105 Eligible land.**

(a) The program is applicable to:

(1) Privately-owned lands;

(2) Land owned by a State or political subdivision of a State;

(3) Lands owned by corporations which are partly owned by the United States;

(4) Lands temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Administration, the U.S. Department of Defense, or by any other Government agency designated by the Deputy Administrator.

(5) Any cropland operated by private persons which is owned by the United States or a corporation wholly owned by it;

(6) Native American lands, except that where grazing operations are carried out on Native American lands administered by the DOI, such lands are within the scope of the program only if covered by a written agreement approved by the DOI giving the operator an interest in the grazing and forage growing on the land and a right to occupy the land in order to carry out the grazing operations; and

(7) Noncropland owned by the United States on which practices are performed by private persons where such practices directly conserve or benefit nearby or adjoining privately owned lands of the persons performing the practices and such persons maintain and use such federally owned noncropland under agreement with the Federal agency having jurisdiction thereof.

(b) The program is not applicable to:

(1) Noncropland owned by the United States which was acquired or reserved for conservation purposes, or which is to be retained permanently under Government ownership, including, but not limited to, grazing lands administered by the FS, or by the Bureau of Land Management, DOI (including lands administered under the Taylor Grazing Act), or the Fish and Wildlife Service, DOI, except as indicated in paragraph (a)(7) of this section.

(2) Nonprivate persons for performance of practices on any land owned by the United States or a corporation wholly owned by it. A nonprivate person is anyone except an individual, partnership, association, corporation, estate, trust, or other business enterprise, or other legal entity (excluding districts which have taxing authority, Federal agencies, States and State agencies, including political subdivisions of a State).

**§ 701.106 Conservation practices.**

Conservation practices as specified by the Deputy Administrator are made available nationally under the ACP and may be included in the State and county programs. Practices shall not be primarily production-oriented and shall have primarily conservation, environmental, or pollution abatement benefits. The practices are designed to be consistent with the agricultural conservation policy stated in section 7 of the Soil Conservation and Domestic Allotment Act, as amended, and national program policy, and are developed primarily to meet a definite need to accomplish one or more of the following:

(a) Establish long-lasting protective cover.

(b) Improve or sustain existing protective cover.

(c) Conserve or safely dispose of water.

(d) Benefit wildlife.

(e) Establish or improve stands of forest trees.

(f) Give protection against soil erosion.

(g) Prevent or abate agricultural-related pollution of water, land, and air.

(h) Meet special State or county conservation needs.

(i) Encourage energy conservation practices.

(j) Improve water quality.

**§ 701.107 County programs.**

(a) ACP shall be developed in each county by the COC, in consultation with the CCRG in accordance with the National and State development guidelines and policies provided. Subject to the availability of funds, at least one public meeting per year shall be held for this purpose.

(b) The county ACP shall be effective after approval by the STC.

**§ 701.108 State programs.**

(a) The SCRG shall develop recommendations for the State ACP. The chairperson of the SCRG may also invite others with conservation or water quality interests to participate in such deliberations. Subject to the availability of funds, at least one public meeting per year shall be held for this purpose.

(b) The State ACP shall consist of the guidelines and practices authorized by the STC and approved by the Deputy Administrator after considering the recommendations submitted by COC's.

**§ 701.109 Selection of practices.**

The practices to be included in the State or county ACP shall be only those practices authorized by Deputy Administrator for which cost-share assistance is essential to permit accomplishment of the ACP objective.

**§ 701.110 Levels and rates of cost-share assistance.**

(a) The maximum level of cost-share assistance for each practice shall be the percentage of the average cost of performing the practice considered necessary to obtain the needed performance of the practice and established at a level such that the participant will make a significant contribution to the cost of performing the practice.

(b) Levels of cost-share assistance under annual agreements for each practice shall not be in excess of seventy-five (75) percent of the average cost of performing the practice as determined by the COC. Where the Deputy Administrator determines a higher level of cost-share assistance is necessary to provide adequate incentive for a participant to perform a conservation practice, the Deputy Administrator may specifically authorize a higher level. See § 701.116 for special provision for low-income farmers.

(c) Levels of cost-share assistance under long-term agreements shall not be in excess of seventy-five (75) percent nor less than 50 percent of the average cost for each practice as determined by the COC.

(d) For the purpose of establishing rates of cost-share assistance, the average cost of performing a practice may be the average cost for either a county or a part of a county as determined by the COC.

**§ 701.111 Starting practices.**

Costs will not be shared for practices or components of practices that are started before COC approval.

**§ 701.112 Method of approval.**

(a) The COC shall determine the extent to which Federal funds may be made available to share the cost of each approved practice, taking into consideration the county allocation, the conservation and environmental problems in the county, the land involved, and the practices for which requested cost-share assistance is considered by the COC as most needed. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the cost-share assistance for the performance of that number of units of the practice. To the extent practicable, notices of approved practices shall be issued before performance of the practice is started. No practice may be approved for cost-share assistance except as authorized by the county program, or according to procedures incorporated therein. Available funds for cost-share assistance shall not be allocated on a proportionate share basis; however, cost-share funds shall be directed to the accomplishment of the most enduring benefits attainable.

(b) Cost-share assistance may be approved under annual agreements or long-term agreements.

(c) Annual agreements may be approved in all counties. Long-term agreements are limited to farms or ranches which are within Soil Conservation Districts (or comparable districts) through which the SCS provides planning and technical services, except:

(1) Farms and ranches located within a county designated for the Great Plains Conservation Program (GPCP) are only eligible if not covered by GPCP contract.

(2) Farms and ranches not located within a Soil Conservation District or comparable district may be eligible for a long-term agreement provided CPO's are developed by the farmer or rancher in cooperation with the SCS and approved by an appropriate State official or, in cases where an appropriate State official is not available, approved by the SCS.

**§ 701.113 Long-term agreements.**

(a) The period of a long-term agreement shall be for not less than three (3) program years nor more than ten (10) program years. The COC and the signors to the long-term agreement in consultation with the SCS representative shall mutually determine the period of the agreement.

(b) The long-term agreement will be based on a CPO for the farm or ranch or portion thereof which has been approved by the Soil Conservation District or comparable district or for farms or ranches not located in a Soil Conservation District or comparable district, by an appropriate State Official or the SCS, as applicable.

(c) The long-term agreement will provide that the farmer or rancher will perform those measures in the CPO's which are determined to be essential to meeting the basic conservation needs of the farm or ranch, or portion thereof, regardless of whether cost-share assistance is approved for such measures.

(d) The owner of the farm or ranch will be required to sign a long-term agreement regardless of whether that person contributes to the cost of approved practices thereon except in cases where the long-term agreement consists wholly of integrated crop management practices.

(e) Any party to a long-term agreement who is not an owner of the farm or ranch shall provide assurance of control of the land for the duration of the period of the agreement.

(f) The level of cost-share assistance as provided in § 701.110, in effect for practices in all years of a long-term agreement shall be the level in effect at the beginning year of the agreement. The rate of cost-share assistance for payment purposes for such practice shall be based on the average cost of performing the practice at the time the practice is performed.

(g) A long-term agreement may be canceled for failure to fully comply with the terms of the agreement if, after consulting with the Soil Conservation District or comparable district board or if none exists with a representative of the SCS, the State or COC determines that the seriousness of the irregularities warrant such action. If the agreement is canceled, the parties to the agreement are jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments under the agreement. In such a case, no other refund or forfeiture provisions of these regulations apply.

(h) A long-term agreement may be revised according to instructions issued by the Deputy Administrator by mutual agreement between the parties to the agreement and the COC based on approved changes in the CPO's for the farm or ranch.

(i) An otherwise eligible person who acquires control of land under an approved agreement may elect to become a successor in interest under such agreement.

(j) An agreement will be terminated with respect to land for which loss of control has occurred and where the person acquiring control of such land elects not to become a successor in interest under the agreement. If the loss of control is for reasons beyond the control of the parties to the agreement, the COC will determine whether any cost-share assistance previously paid shall be refunded; however, in no event shall the refund be greater than would be required in cases where loss of control is voluntary. If the loss of control is voluntary on the part of the signatories to the agreement, the signatories will be jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments, with respect to the land for which control is lost. However, a refund will not be required for cost shares where the COC or the STC determine, after consulting with a representative of the SCS, that failure to perform the remaining practices in the agreement will not impair the effectiveness of the practices which have been performed and that the completed practices have provided conservation benefits consistent with the cost shares which have been paid.

(k) An agreement may be terminated by the COC, after considering the recommendation of the Soil Conservation District or comparable district board or if none exists with a representative of the SCS if such action is in the public interest. The COC will determine the amount of cost shares previously paid that shall be refunded.

(l) An agreement may be terminated by the COC upon the written request of the participant to a long-term agreement where no cost-share assistance has been paid for any of the scheduled practices and where the participant does not intend to perform any of the scheduled practices.

**§ 701.114 Replacement, enlargement, or restoration.**

The establishment or installation of a practice, for the purposes of the program shall be deemed to include the replacement, enlargement, or restoration of a practice for which cost-share assistance has been allowed if the practice has served its normal lifespan

or if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to solve the related conservation or environmental problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The COC believes that the replacement, enlargement, or restoration of the practice merits consideration to an equal extent with other practices.

(d) The replacement, enlargement, or restoration of the practice is not being performed because the producer has increased his operation to where these measures are needed to solve the increased conservation or environmental problem.

**§ 701.115 Pooling agreements.**

Eligible persons in any local area may agree in writing with the approval of the COC to perform designated practices which will solve a mutual conservation, pollution, or other environmental problem on the land of the participants. For purposes of eligibility for cost-share assistance, practices carried out under such an approved written agreement shall be regarded as having been carried out on the land of the persons who performed the practices.

**§ 701.116 Special provisions for low-income farmers and ranchers.**

(a) Except as otherwise provided in § 701.110(c), the COC may approve in the case of low-income farmers and ranchers as defined in this section a level of cost-share assistance of up to eighty (80) percent of the average cost of performing practices.

(b) A low-income farmer or rancher is one who as determined by the COC is a small producer whose livelihood is largely dependent on the farm or ranch and whose prospective income and financial resources for the current year are such that the low-income farmer or rancher could not reasonably be expected to perform needed conservation practices at levels of cost-share assistance applicable to other persons in the county.

**§ 701.117 Maximum cost-share assistance limitation.**

For each program year, the total amount which may be received by any person under this subpart for approved practices shall not exceed $3,500 except that:

(a) The total amount received for approved practices, including those carried out under pooling agreements, shall not exceed $10,000; and

(b) The total amount received under an ACP long-term agreement (LTA) shall not exceed the annual payment limitation ($3,500) multiplied by the number of years remaining in the LTA. The payment limitation in effect after the first year of LTA or after an LTA payment has been made shall be equal to the lessor of the following:

(1) The number of years remaining in the LTA times the annual payment limitation; or

(2) The difference between the LTA's maximum payment limitation and the ACP cost-share assistance previously earned during the contract period.

**§ 701.118 Completion of practices.**

Cost-share assistance for the practices contained in this part is conditioned upon the performance of the practice according to all applicable specifications and program provisions.

**§ 701.119 Time of filing payment application.**

Payment of cost-share assistance will be made only upon application submitted on the prescribed form to the county office by a date established by the COC. Any application for payment may be denied if any form or information required of the applicant is not submitted to the county office within the applicable time limit.

**§ 701.120 Water Quality Incentive Projects.**

(a) The WQIP administered through the ACP provides both financial and technical assistance to achieve the source reduction of pollutants in an environmentally and economically sound manner in order to assist in compliance with State and Federal environmental laws to enhance the environment.

(b) Other provisions as contained in subpart A and this subpart apply to WQIP.

(c) Any representative of USDA, or designee thereof, shall have the right of access to land which is the subject of a WQIP application, or land which is under a WQIP agreement; and shall have the right to examine records, with respect to crop management systems, use of agricultural inputs, recordkeeping, land use decisions, resource inventory, and impacts on water quality for the purpose of determining whether there is compliance with the terms and conditions of the WQIP agreement.

(d) A participant may, in addition to any payment earned under WQIP, receive other financial assistance, rental payments, or tax benefits from a State or subdivision of such State for enrolling lands in WQIP.

(e) Eligible land areas must be:

(1) Wellhead areas included by the Secretary or designee in consultation with Environmental Protection Agency (EPA) and the State agency responsible for the State's operations under the Safe Drinking Water Act (42 U.S.C. 300 h-7);

(2) Critical nonpoint agricultural areas identified in Clean Water Act 319 plans;

(3) Karst topography areas with sinkholes;

(4) Agricultural nonpoint source areas that may adversely impact threatened or endangered species habitat;

(5) Areas recommended by State environmental agencies and approved by the Secretary;

(6) Areas recommended by EPA and DOI in consultation with the Secretary;

(7) Lands not located within approved or designated areas but that are in proximity and if allowed to continue to operate under the existing management practices would defeat the purpose of the program; and

(8) Areas contributing to identified water quality problems in Secretarial designated areas.

(f) WQIP agreements shall be administered through long-term agreements. These agreements shall be a minimum of three (3) years to a maximum of five (5) years in duration as determined by the Deputy Administrator.

(g) The applicant, in consultation with the SCS or other designated technical agency, shall develop a Water Quality Resource Management Plan which will:

(1) Include an assessment of the resources and management measures needed to achieve the source reduction of agricultural pollutants;

(2) Cover the entire tract or tracts owned or operated by the applicant within the WQIP area;

(3) Be reviewed and approved by SCS;

(4) Be reviewed and approved by the local Conservation District; and

(5) Be consistent with conservation compliance goals.

(h) Technical assistance will be provided by the SCS as the lead agency with assistance from the Cooperative Extension Service, Agricultural Research Service, and other Federal agencies and private consultants as deemed necessary by the Secretary.

**§§ 701.121–701.199 [Reserved]**

## Subpart C—Emergency Conservation Program

**§ 701.200 Program objective.**

The objective of the ECP is to cost share with eligible persons to rehabilitate farmlands damaged by wind and water erosion, floods, hurricanes, or other natural disasters and to provide water conservation or water

enhancement measures during periods of severe drought.

**§ 701.201 Program availability.**

(a) The COC may implement the program subject to the availability of funds where new conservation problems have been created on farmland by a natural disaster or wind erosion which if not treated will:

(1) Impair or endanger the land;

(2) Materially affect the productive capacity of the land;

(3) Represent damage which is unusual in character and except for wind erosion shall not be the type that would recur frequently in the same area; and

(4) Be so costly to rehabilitate that Federal assistance is or will be required to return the land to productive agricultural use.

(b) Subject to the availability of funds, the COC with the concurrence of the STC and approval of the Deputy Administrator may implement the program to carry out emergency water conservation and water enhancement measures during periods of severe drought.

(c) Land normally used for farming or ranching which is protected by levees or dikes is eligible for enrollment in the ECP, except as follows:

(1) Land adjacent to water impoundment reservoirs subject to inundation when the reservoir is filled to capacity;

(2) Land that is subject to frequent damage which is any of the following:

(i) Land has been severely damaged 3 or more times in the last 25 years, including the current disaster. Also land protected by levees or dikes that have physically failed and severely damaged adjoining land 3 or more times in the last 25 years, including the current disaster.

(ii) Land that is susceptible to severe damage because of its location, regardless of whether it has been severely damaged in the last 25 years.

(iii) Flowage or flood easements acquired by the U.S. Army Corps of Engineers or other authorities that are subject to inundation when water is released under the course of normal operations.

(3) Land located in old or new channels of a stream, creek, river, or other similar body of water or on any of the inside banks unless approved by DASCO. Facilities in irrigation canals or on their inside banks may be approved if the canal is not a channel subject to flooding;

(4) Land in greenhouses or other confined areas; and (5) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land.

**§ 701.202 Eligibility of person and land.**

Person and land eligibility requirements are the same as for the ACP as provided in §§ 701.104 and 701.105 except in cases of severe drought conditions then cost-share assistance is limited to supplying:

(a) Emergency livestock water, including measures to assist confined livestock operations, and

(b) Water for existing irrigation systems serving orchards and vineyards.

**§ 701.203 Emergency Conservation Program practices.**

(a) Except for severe drought and wind erosion, cost-share assistance may be offered for emergency conservation practices only to replace or restore farmland to a condition similar to that existing before the natural disaster. Cost-share assistance may not be offered for the solution of conservation problems existing before the disaster.

(b) ECP practices for which cost-share assistance may be authorized are:

(1) Removing debris from farmland.

(2) Grading, shaping, releveling, or similar measures.

(3) Restoring permanent fences.

(4) Restoring structures and other installations.

(5) Emergency wind control measures.

(6) Drought emergency measures.

(7) Other emergency conservation measures.

**§ 701.204 Practice approval.**

Practices listed in § 701.203 (b)(1) through (b)(5) may be approved by COC's. Authorization to offer practices at § 701.203 (b)(6) and (b)(7) shall be approved by the Deputy Administrator.

**§ 701.205 Extent of cost-share assistance.**

(a) The maximum payment under this subpart per person, per disaster, is limited to $200,000 including the amount of any payment received by such person as the result of the disaster under a pooling agreement.

(b) The cost-share payments which may be made by ASCS for a practice under the program shall, subject to the maximum payment amount specified in paragraph (a) of this section and any other limitation as may apply, be further limited to the level of cost-share assistance established by the COC not to exceed:

(1) Sixty four (64) percent of the first $62,500 of the eligible cost of restoring the loss;

(2) Forty (40) percent of the second $62,500 of the eligible cost of restoring the loss; and

(3) Twenty (20) percent of the eligible cost above $125,000 to restore the loss.

**§ 701.206 Eligible costs.**

Upon determination that a person is eligible for ECP assistance, cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice. Such costs may include personal labor, equipment, and other such costs which are determined by the COC to be related to the costs of performing the practice. COC's shall limit costs for the use of personal equipment to an amount that reflects out-of-pocket expenses. Expenses for personal labor and personal equipment shall be less than rates charged by contractors who expect to make a profit for their efforts.

**§ 701.207 Filing requests.**

(a) The COC shall establish an enrollment period for filing cost-sharing requests immediately after the COC's authorization or the Deputy Administrator's authorization in cases of drought to implement the ECP in the county. Such periods shall be at least 30 days in length. Late-filed requests may be accepted by the COC in justifiable cases.

(b) Costs will not be shared for practices or components of practices that are started before a request is filed with the county office.

**§ 701.208 Approving requests.**

COC's shall issue practice approvals only when:

(a) Funds are available;

(b) The requested practice has been determined eligible for cost-share assistance; and

(c) The eligible person has indicated a readiness to start the practice.

**§ 701.209 Pooling agreements.**

Pooling agreements may be used on the same basis as provided for at § 701.115.

**§ 701.210 Payment approval.**

The COC is authorized to approve payments not to exceed $10,000 per person per disaster. The STC is authorized to approve payments not to exceed $20,000 per person per disaster. Cost-share assistance in excess of $20,000 must be approved by the Deputy Administrator.

**§§ 701.211–701.299 [Reserved]**

## Subpart D—Forestry Incentives Program

**§ 701.300 Program objective.**

The objective of the FIP is to help ensure a future supply of timber will be accomplished by encouraging landowners to apply forestry practices for:

(a) Production of softwood and hardwood timber and other associated forest resources to increase afforestation of suitable open lands.

(b) Reforestation of cutover and understocked forest lands.

(c) Timber stand improvement.

(d) Intensive multipurpose management.

(e) Protection of forest resources.

**§ 701.301 Designated counties.**

The STC in consultation with the State Forester will designate the counties or parts of counties in which FIP will be operated. The following will be considered in making the designations:

(a) The total acreage in the county devoted to desirable types of softwood and hardwood timber.

(b) The estimated area in the county that is under eligible ownership.

(c) The estimated acreage suitable for the production of forest products.

(d) The availability of funds.

(e) The enhancement of other forest resources.

**§ 701.302 Eligible person, land, and ownerships.**

(a) An eligible person is a private individual, group, Native American Tribe or other native group, association, corporation excluding corporations whose stocks are publicly traded, or other legal entity which owns eligible land. Firms principally engaged in the manufacture of wood products are not eligible. However, forest landowners who manufacture forest products on a part-time or irregular basis are eligible.

(b) Eligible land is nonindustrial private forest land capable of producing at least fifty (50) cubic feet of wood per acre per year.

(c) Eligible farms are those not exceeding a total of 1,000 acres of eligible private nonindustrial forest land in the United States or any commonwealth, territory, or possession of the United States. The STC with the concurrence of the State Forester may approve cost-share assistance with landowners owning more than 1,000 acres but not more than 5,000 acres of eligible forest land where it is deemed to be to the public's significant benefit.

(d) Significant public benefits are primarily those resulting from cost-effective timber production with related benefits to aesthetics, recreation, wildlife habitat, watershed protection, erosion reduction, and other resource values.

**§ 701.303 Program funds.**

(a) Each designated State and county will receive a share of the funds provided for the program. Funds will be distributed on the basis of the forest production opportunities in each State, considering the acreage of private nonindustrial forest lands, the number of eligible owners, the potential productivity of such lands and the need for reforestation, timber stand improvement, other forestry management needs, and the enhancement of other forest resources. The Deputy Administrator will allocate funds after consultation with representatives of the FS and a committee of not less than five State foresters or equivalent State officials selected by a majority of the State foresters or equivalent State officials. The STC will consult with the State forester when determining the allocation of such funds to the designated counties.

(b) A limitation on the amount of funds which may be obligated under long-term agreements shall be established by the STC according to guidelines provided by the Deputy Administrator.

**§ 701.304 Eligible practices and cost-share assistance requirements.**

(a)(1) Cost-share assistance may be available for the following National practices and authority:

(i) Planting Trees.

(ii) Improving a Stand of Forest Trees.

(iii) Special Forestry Practices.

(2) The Deputy Administrator after consultation with the FS, may approve special forestry practices needed to solve a significant and unique local condition for which the National practices are not adequate. Such practices may be approved for inclusion in a county program after consultation with the program development group and the recommendation of the COC, the service forester, the STC, and the State forester.

(b) A forest management plan is required as a condition for cost-share assistance. The Forest Management plan will be developed in consultation with the landowner, approved by the service forester, and will contain information for accurate evaluation of practice effectiveness. The participant will be required to perform those measures in the Forest Management plan which are essential to the effectiveness of the practice for which costs are shared. In the development of the Forest Management plan, consideration will be given to wildlife, watershed protection, recreation, erosion control, aesthetics, and other associated forest resources values as well as cost-effective timber production.

**§ 701.305 The National FIP.**

The National FIP is jointly developed by ASCS, the FS and the committee of State foresters provided for in § 701.303.

**§ 701.306 Development of State FIP.**

(a) A State FIP shall be developed in each applicable State or territory according to the provisions contained in this part and in the National FIP. The State FIP shall be developed by the State forestry committee as provided in § 701.303.

(b) The State FIP shall be:

(1) Recommended by the STC and State forester; and

(2) Approved by the Deputy Administrator after consulting with the FS.

**§ 701.307 Development of county FIP.**

(a) A county FIP shall be developed in each designated county according to the provisions of the State FIP. The county FIP shall be developed by the CCRG. The CCRG, working with the governing body of the conservation district, the State forestry agency representatives, the county supervisor of the Farmers Home Administration, and others with conservation and environmental interest shall develop recommendations for the county program.

(b) The county FIP shall be recommended by the COC and service forester and approved by the STC and State forester.

**§ 701.308 Adaptation of practices.**

(a) The practices included in the State FIP shall satisfy the conditions and requirements of the National FIP. The STC and State Forester may modify or delete National FIP provisions to make practices more restrictive where such changes satisfy the objectives of the program.

(b) The practices included in the county FIP must meet the conditions and requirements of the State FIP. The COC in consultation with State Forestry representative or Service Forester may modify or delete State FIP provisions to make practices more restrictive where such changes satisfy the objectives of the program.

**§ 701.309 Levels and rates of cost-share assistance.**

(a) The maximum cost-share assistance for each practice shall be the percentage of the actual cost of performing the practice considered necessary by ASCS to ensure completion of the practice by the participants.

(b) Levels of cost-share assistance shall be approved by the STC and shall

not be in excess of sixty-five (65) percent of actual costs incurred by the landowners.

(c) For the purpose of establishing rates of cost-share assistance, the average cost of performing a practice may be the average cost for a State, a county or a part of a county, as determined by the STC.

(d) The rates of cost-share assistance for practices included in the county FIP may be lower than the rates approved for general use in the State, as determined by the COC.

**§ 701.310 Prior approval for cost-share assistance.**

Costs will be shared only for those practices, or components of practices, for which cost-share assistance is requested and approval issued before performance is started.

**§ 701.311 Methods of approval.**

The COC shall determine the extent to which Federal funds may be made available to share the cost of each approved practice. Approvals shall be made based on consideration of the county allocation, cost-effective opportunities for increasing timber production, potential for enhancing other forest resources, the forestry needs in the county, and the practices for which requested cost-share assistance is considered by the COC as most needed. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the cost share for the performance of that number of units of the practice. Notices of approved requests shall be issued before the practice may be started. No practice may be approved for cost-share assistance except as authorized by the county FIP. Available funds for cost-share assistance shall not be allocated on a pro-rata basis, but shall be directed to the accomplishment of the most production attainable.

(a) Cost-share assistance may be approved under annual agreements or long-term agreements.

(b) Land covered by a GPCP contract is not excluded from an annual or long-term agreement if the land is otherwise eligible.

(c) The same practices, cost-share levels, and general program provisions apply to both annual agreements and long-term agreements.

**§ 701.312 Long-term agreements.**

(a) The period of a long-term agreement shall be for not less than three (3) years nor more than ten (10) years. The COC and the parties to the agreement in consultation with the State forestry representative will mutually determine the scheduling of essential practices and practice cost-sharing over the period of the agreement.

(b) The long-term agreement shall be based on a forest management plan for the land which shall be developed by the service forester.

(c) The long-term agreement shall provide that the owner shall perform those measures in the forest management plan which are determined to be essential regardless of whether cost-share assistance is approved for such measures.

(d) The level of cost-share assistance in effect for practices in all years of a long-term agreement shall be the level in effect for the beginning year of the agreement. The rate of cost-sharing for payment purposes for such practices will be based on the average cost of performing the practice at the time the practice is performed.

(e) A long-term agreement may be canceled for failure to fully comply with the terms of the agreement if, after consulting with the service forester, the STC or COC determines that the seriousness of the irregularities warrant such action. If the agreement is canceled, the signors to the agreement are jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments under the agreement. In such a case, no other refund or forfeiture provisions of these regulations apply.

(f) A long-term agreement may be revised in accordance with instructions issued by the Deputy Administrator where there is a change in status of the participants or the land under agreement.

(g) An eligible person who acquires control of land under an approved agreement may elect to become a successor in interest under such agreement.

(h) An agreement will be terminated with respect to land for which loss of control has occurred and where the person acquiring control of such land elects not to become a successor in interest under the agreement. If the loss of control is for reasons beyond the control of the signatories to the agreement, the COC will determine whether or not any cost-share assistance previously paid shall be refunded; however, in no event shall the refund be greater than would be required in cases where loss of control is voluntary. If the loss of control is voluntary on the part of the signatories, they will be jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments, with respect to the land for which control is lost. A refund will not be required for cost-share assistance where the COC or the STC determines, after consulting with the service forester, that failure to perform the remaining practices in the agreement will not impair the effectiveness of the practices which have been performed and that the completed practices will provide forestry benefits consistent with the cost-share assistance which have been paid.

(i) An agreement may be terminated if, after considering the recommendation of the service forester, the STC or COC recommends that such action is in the public interest.

**§ 701.313 Restoration of practices.**

(a) Cost-share assistance may be authorized under FIP for the establishment or installation of the practices contained in this part. Cost-share assistance may not be authorized for repeating any of the practices in this part with the same owner on the same acreage, except as provided in paragraph (b) or (c) of this section.

(b) Cost-share assistance may be authorized for the replacement, enlargement, or restoration of practices for which such assistance has been allowed under the program only if all of the following conditions exist:

(1) Replacement or restoration of the practice is needed to solve a conservation or environmental problem.

(2) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(3) The COC believes that the replacement or restoration of the practice merits consideration under the program to an equal extent with other practices cost-shared.

(c) Cost-share assistance may be authorized for timber stand improvement measures carried out in repetitive steps where the stand treatment warrants such silvicultural practice in the judgment of the service forester.

**§ 701.314 FIP maximum cost-share assistance limitations.**

For each program year, the total amount which may be received by any person under this subpart shall not exceed $10,000 with respect to eligible owners (§ 701.302) in the United States or any commonwealth, territory, or possessions of the United States for approved practices performed under annual or long-term agreements.

**§ 701.315 Completion of practice.**

Cost-share assistance for the practices contained in this subpart is conditioned

upon the performance of the practices according to all applicable specifications and program provisions.

**§ 701.316 Time of filing payment application.**

Cost-share assistance will be made only upon an application submitted to the county office by the prescribed time limit or any authorized extension. Any application for payment may be rejected if any information required of the applicant is not submitted to the county office within the applicable time limit.

**§§ 701.317–701.399 [Reserved]**

Signed at Washington, DC, on December 30, 1993.

**Bruce R. Weber,**

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 94–415 Filed 1–7–94; 8:45 am]

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## Agricultural Marketing Service

## 7 CFR Parts 1005, 1007, 1011, and 1046

[DA–93–29]

## Milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Revised Proposed Suspension of Certain Provisions of the Orders

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

**ACTION:** Proposed suspension of rules.

**SUMMARY:** This document invites written comments on a proposal that would suspend for nearly two years certain provisions of the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk orders. If adopted, the proposal would regulate a plant at Kingsport, Tennessee, under the Tennessee Valley order, instead of the Carolina order, and it would keep regulated under the Tennessee Valley order a plant at Somerset, Kentucky, that otherwise might become regulated under the Louisville-Lexington-Evansville order. The proposals were submitted by Land-O-Sun Dairies, which operates the Kingsport, Tennessee, plant, and Southern Bell Dairy, Inc., which operates the Somerset, Kentucky, plant. These handlers contend that without the suspension they would be subject to pricing disparities that could jeopardize their business.

**DATES:** Comments are due no later than January 20, 1994.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Suspension (DA–93–29): Issued October 22, 1993; published October 28, 1993 (58 FR 57970).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory burden on small entities by removing pricing disparities that are causing or could cause financial hardship for certain distributing plants.

The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58 FR 57970) on October 28, 1993, concerning the proposed suspension of certain provisions of the Georgia, Carolina, and Tennessee Valley Federal milk orders (DA–93–29). The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by November 4, 1993. Six comment letters were received concerning the three-market proposed suspension.

Subsequent to the issuance of the above proposed suspension, a suspension request was received from a handler regulated under the Tennessee Valley order that in effect expands the initial suspension issue to the Louisville-Lexington-Evansville order. It also affects a proposed suspension that was issued earlier for the Louisville order. Because of the interrelationship of these several requests, it has been determined that a revised proposed suspension involving all four orders should be issued for comment. Therefore, notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the orders regulating the handling of milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas is being considered for a 23-month period beginning February 1, 1994:

1. In § 1005.7(d)(3) of the Carolina order, the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area";
2. In § 1007.7(e)(3) of the Georgia order, the words ", except as provided in paragraph (e)(4) of this section,";
3. In § 1007.7 of the Georgia order, paragraph (e)(4);
4. In § 1011.7(d)(3) of the Tennessee Valley order, the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area"; and
5. In § 1046.2 of the Louisville-Lexington-Evansville order, the word "Pulaski".

All persons who desire to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 10th day after publication of this notice in the **Federal Register**.

The comment period is limited to 10 days so that the suspension, if found appropriate, can be implemented quickly and thereby minimize financial hardship and disruptive marketing conditions.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

**Statement of Consideration**

This proposed suspension would allow a distributing plant at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order to be regulated under that order rather than the Carolina order, as now, despite the plant having greater sales in the Carolina marketing area. It would also allow a distributing plant located at Somerset, Kentucky, that has been regulated under the Tennessee Valley order to remain regulated there even if it should develop greater sales in the Louisville-Lexington-Evansville (Order 46) marketing area. In addition, the proposed suspension would allow a supply plant at Springfield, Kentucky, that has been supplying the Somerset plant to remain pooled under the Tennessee Valley order without having to make uneconomic shipments of milk that it contends would be necessary if the Southern Belle plant shifted to Order 46.

*1. The problem of Land-O-Sun Dairies, Inc.* In recent months, the blend price to producers at Kingsport, Tennessee, under the Tennessee Valley order has been significantly higher than the blend price at that location under the Carolina order. For example, during the months of July through October 1993, the Tennessee Valley blend price at Kingsport was 32 cents, 29 cents, 20 cents, and 20 cents, respectively, higher than the Carolina blend price at Kingsport. Although the Class I price at Kingsport is identical under both of these orders, the Tennessee Valley order's higher Class I utilization has resulted in a higher blend price at Kingsport during nearly every month for the past two years.

The difference in blend prices at Kingsport requires Land-O-Sun Dairies, as a Carolina order handler, to pay significant over-order prices to retain its milk supply in competition with nearby handlers regulated under the Tennessee Valley order. Land-O-Sun has indicated that it cannot continue to pay these over-order prices without jeopardizing the existence of its business. It therefore proposed a suspension of certain provisions of Orders 5 and 11 that would allow it to become regulated under Order 11.

As noted in the earlier proposed suspension, the paragraph that is proposed to be suspended from the Georgia order is merely a conforming change to preserve the status quo between the Carolina and Georgia orders. This change is necessary to continue the regulation of a Greenville, South Carolina, plant under the Georgia order. Without the suspension, the plant would become regulated under the Carolina order.

*2. The problem of Southern Belle Dairy Company.* Southern Belle Dairy at Somerset, Kentucky, has been regulated under Order 11 for the past four years. However, recently it has acquired accounts that could cause it to shift to Order 46.

In recent months, the blend price at Somerset under Order 11 has been significantly higher than the blend price at that location under Order 46. For example, during the months of July through October 1993, the blend price under Order 11 at Somerset was 67 cents, 62 cents, 49 cents, and 25 cents, respectively, higher than the Order 46 price at that location. Of these amounts, 19 cents is attributable to a 19-cent higher Class I price at that location under Order 11. Southern Belle contends that if it should shift to Order 46 it would have to pay substantial over-order prices to its producers to retain its milk supply. Moreover, slight changes in sales could cause it to shift back and forth between the two orders, causing market instability and uncertainty under the base-excess programs applicable to both orders.

*3. The problem of Armour Food Ingredients Company.* Armour Food operates a supply plant and a nonpool manufacturing plant at Springfield, Kentucky. The supply plant has been regulated under Order 11 since August 1992. If the Southern Belle plant shifts to Order 46, Armour's supply plant would also become subject to the regulations of Order 46 because the plant is supplying milk to the Southern Belle plant. Armour contends that the plant would not qualify as a pool plant based on its present milk handling practices because, under the net shipment provision of Order 46, all of the shipments sent to its manufacturing facility from pool distributing plants for surplus disposal would be subtracted from its shipments to pool distributing plants. Armour states that to keep the milk of its producers pooled under Order 46 it would have to incur substantial increases in transportation and assembly costs. To avoid these costs, Armour proposed suspending language in the net shipment provision of Order 46.

*4. Industry responses to the earlier proposed suspensions (DA-93-29 and DA-93-26).* On the basis of the Land-O-Sun request, a notice of proposed suspension of provisions in Orders 5, 7, and 11 was issued on October 22, 1993 (DA-93-29)(58 FR 57970). Four comments were submitted in support of the action, and two comments were filed in opposition to it.

Milkco, Inc., a handler regulated under the Carolina order with a plant in Asheville, North Carolina, stated that it supported the proposed suspension. Southern Belle Dairy also submitted a letter in support of the suspension.

A letter supporting the suspension also was received from Mid-America Dairymen, Inc., on behalf of Southern Milk Sales, Inc., a dairy cooperative with producer milk pooled on the Tennessee Valley, Georgia, and Carolina orders. The cooperative notes in its letter that "paying higher over-order values to maintain its supply of milk would jeopardize the existence of the affected distributing plant."

Additionally, an individual dairy farmer who supplies producer milk to Land-O-Sun filed a comment in support of the suspension. He stated that if Land-O-Sun paid him a lesser price for his milk he would have to sell to another handler.

Coburg Dairy, a Carolina order handler located in Charleston, South Carolina, filed a comment opposing the suspension. Coburg competes with the Kingsport plant for Class I sales in the Carolina market. The handler argued that the regulation of the Kingsport plant under the Tennessee Valley order would give the plant a competitive advantage in the Carolina market since it has a lower Class I price and because it presumably would not have to pay over-order prices to its producers.

The North Carolina Farm Bureau Federation, a general farm organization, also objected to the proposed suspension on the grounds that regulation of the Kingsport plant under Order 11 would jeopardize the over-order prices in the Carolina market. The Federation indicated that eroding Class I premiums and lower Class I utilization were threatening the health of the dairy industry in North Carolina.

In response to the Armour Food request, a notice of proposed suspension of the net shipment provision of Order 46 was issued on September 22, 1993 (DA-93-26) (58 FR 50526). Three comments were submitted.

Southern Belle supported the suspension, indicating that Armour was supplying it with milk and could encounter problems of assembly and transportation if the plant became subject to the provisions of Order 46 because of a shift in regulation of the Southern Belle plant from Order 11 to Order 46.

Milk Marketing, Inc., a cooperative association with 688 dairy farmers under Order 46, and The Kroger Company, a handler operating Winchester Farms Dairy at Winchester, Kentucky, filed comments opposing the proposed suspension of the net shipment provision. MMI argued that if the net shipment provision is suspended, the intent of the order would not be carried out appropriately and that the needs of the order would not be met in an efficient manner. Kroger stated that there was not an abundant amount of milk available for fluid use under Order 46 and that the net shipment provision was needed to help assure that distributing plants have sufficient supplies of milk to meet their fluid requirements. It contends that there is no justification to relax the performance provisions of the order during the season when milk availability is reduced and Class I sales increase simply because there is a "possibility" that a distributing plant may switch regulation from Order 11 to Order 46.

No final action has been taken on Armour's request to suspend the net shipment provision. However, since that issue would become moot under the proposed suspension being considered herein, final action on the Armour proposal is being held in abeyance pending the outcome of the current proposal.

**List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046**

Milk marketing orders.

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: January 3, 1994.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 94–424 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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**7 CFR Part 1094**

[DA–94–06]

## Milk in the New Orleans-Mississippi Marketing Area; Proposed Suspension of a Provision of the Order

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

**ACTION:** Proposed suspension of rule.

**SUMMARY:** This document invites written comments on a proposal to suspend, for 23 months, the 45 percent delivery requirement for a plant operated by a cooperative association that is located within the New Orleans-Mississippi marketing area. The suspension was requested by Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana. The association states that without the suspension, it will be forced to make inefficient qualifying shipments of milk merely to keep the milk of its producers qualified for pooling under the order.

**DATES:** Comments are due no later than January 20, 1994.

**ADDRESSES:** Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, suspension of the following provision of the order regulating the handling of milk in the New Orleans-Mississippi marketing area is being considered for the period from February 1, 1994 through December 31, 1995:

In § 1094.7(c), the words "45 percent or more of the".

All persons wishing to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 10th day after publication of this notice in the **Federal Register**. The filing period is limited to ten days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

**Statement of Consideration**

The proposed action would suspend for the months of February 1994 through December 1995 the 45 percent delivery requirement for a cooperative association plant that is located in the New Orleans-Mississippi marketing area.

Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana, that is regulated under Order 94 submitted the suspension request. The cooperative stated that because of the present 45 percent delivery requirement applicable to a cooperative association that wishes to qualify a manufacturing plant for pooling, it has had to shift some of its producers to neighboring Greater Louisiana (Order 96) pool plants to keep its Kentwood plant qualified as a pool plant under Order 94. It indicated that Order 96 requires that six days' production of a producer must be received at pool plants each month in order to qualify the milk for pooling by diversion to a nonpool plant. Accordingly, it has had to move the milk of selected producers to Order 96 pool plants six days per month. Since this milk is not actually needed by these

pool plants, the cooperative has then had to back-haul the milk to its Kentwood manufacturing plant for processing. The problem is now particularly acute, according to the cooperative, because two Order 94 pool plants have notified Gulf Dairy Association that they will no longer purchase milk from them after February 1, 1994.

Gulf Dairy Association noted that the problem it is experiencing will be resolved through the proposed merger of milk orders that is now under consideration by the Department. It urged that the proposed suspension be effective pending the completion of that proceeding.

**List of Subjects in 7 CFR Part 1094**

Milk marketing orders.

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: January 3, 1994.

**Lon Hatamiya,**

*Administrator.*

[FR Doc. 94–427 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 103

**[INS No. 1384–92; AG Order No. 1821–93]**

**RIN 1115–AD18**

### Adjustment to the Examinations Fee Schedule

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to adjust the current Examinations Fee schedule for the Immigration and Naturalization Service (INS) in order to generate sufficient revenue to recover the costs of providing immigration and naturalization services, and to change procedures and charges for the Petition for a Nonimmigrant Worker, Form I–129, in response to INS and user experiences. The fee adjustment is needed to comply with specific Federal immigration laws and the Federal user fee statute and regulations, which require the recipients of special benefits from Government services that are not directed to the public at large to bear the costs to the Government of providing those services. The fees proposed in this rule result from an analysis of adjudication and naturalization services and associated costs for fiscal years 1993 and 1994, and are calculated to recover the costs of providing these special services and benefits. This proposed rule ensures that funds will be available to continue to improve the quality of service to users. Its financial impact on users of the services is small. In most cases the proposed fee increase is five dollars. In the aggregate this proposed fee increase is slightly less than the projected change in the consumer price index since the last general fee increase in April 1991.

**DATES:** Written comments must be submitted on or before February 9, 1994.

**ADDRESSES:** Comments must be submitted in writing for consideration. Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch; Immigration and Naturalization Service; 425 I Street, NW.; room 5307; Washington, DC 20536–0002. To ensure proper handling, please reference INS No. 1384–92 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Barbara J. Atherton, Chief, Fee Analysis and Operations Branch, Office of Finance; Immigration and Naturalization Service; 425 I Street, NW.; room 6240; Washington, DC 20536–0002; telephone 202–616–2754.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) is required by law to charge fees to the users of its services. Such fees presently comprise about 36 percent of the INS budget. There are four fee accounts, and the fees which are collected in each account are used to fund specific services. The four fee accounts are the Immigration Examinations Fee Account, the Immigration User Fee Account, the Land Border Inspection Fee Account, and the Legalization Fee Account. Because the fees in each of these accounts are designed to recover the costs which are incurred to provide specific services, they must be reviewed regularly and adjusted as costs change or more precise cost determination processes become available. This rule proposes to modify the examinations fee schedule.

The Immigration Examinations Fee Account (Examinations Fee Account) provides funds for immigration adjudication and naturalization services. It is funded by a total of 32 separate fees for processing the various applications used by INS. Examples include applications for permanent resident status, petitions for relatives, employment authorization applications, reentry permits, and extensions of temporary stay. The separate fees currently range from $30 to $140.

To cover the costs of providing adjudication and naturalization services, it has been determined that a fee increase of 7.5 percent is needed. This increase reflects inflation since the last general fee increase in April 1991, the assignment of certain additional costs to the Examinations Fee Account for services that support adjudications and naturalization functions, and the costs of investments to improve services to users. This proposed rule would adjust the current fee schedule by 7.5 percent.

*A. Refining the Fee Development Process*

INS has initiated a process of continuous improvement in the management of the finances of the fee accounts and the development of fee schedules. Areas that are being addressed over a projected multi-year time horizon include: Identifying the INS resources consumed in providing services to our customers which by law must be recovered through fee revenues; refining definitions of direct and indirect costs; and refining cost measurement systems, in concert with wider Department of Justice initiatives to improve financial management information systems.

Of necessity, to ensure the availability of necessary funds for maintaining operations, the first phase of this effort has been identification of INS resource use that must be recovered through fees. Prior to 1992, INS had not analyzed rigorously the full extent of its costs related to fee-supported services. In 1992, INS undertook a comprehensive review of the work that should properly be charged to fee accounts in order to meet statutory requirements. Extensive information gathering and analysis were performed as part of this effort. The aggregate cost of the work in support of the Examinations Fee Account was computed based on the budget for fiscal year 1993 and the estimated budget for fiscal year 1994.

This information was used to compute the percentage revenue increase required to cover the costs, and that percentage, with limited exceptions, was applied to the existing fee schedule that has been in place since 1991 to arrive at the proposed fees, through the steps explained in this proposed rule.

Instead of using the existing fee schedule as a base for the percentage increases, INS also considered whether it would have been feasible to base the proposed fees on 1992 cost measurements. INS rejected this

approach because of problems with 1992 data caused by the transition to a more automated system of productivity measurement.

Future fee adjustments will reflect efforts to refine direct and indirect cost definitions and measurements, and will address alternative approaches to the allocation of indirect costs among applicants for services. At this time, however, the current fee schedule, with the adjustments specifically identified below, reflects the best available comprehensive data on service costs, and was therefore judged to be the soundest foundation for computing the proposed fee schedules for fiscal year 1994.

## II. Directives and Guidelines

INS's examinations fees have been designed in accordance with legislation, guidance from the Office of Management and Budget (OMB) and the Department, and accepted principles of ratemaking in regulated public and commercial enterprises. The overall principle employed is one of cost causation, which means the fees are designed to cover the costs associated with providing the services funded through the Examinations Fee Account.

### *A. Legislation*

The enabling legislation for the Examinations Fee Account is the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–459), a U.S.C. 1356(n), which provides that the receipts collected shall "* * * remain available * * * to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees * * *". The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991 (Pub. L. 101–515), 8 U.S.C. 1356(m), provides further "* * * that fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." The general authority to assess fees for services is found in the Independent Offices Appropriation Act, 1952 (Pub. L. 82–137) (IOAA), 31 U.S.C. 9701, frequently referred to as the "user fee statute," which provides for Federal agencies to define special services provided to unique segments of the population and to charge fees for those services instead of supporting them through general tax revenues. The IOAA provides that "* * * each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible." These charges, among other things, are to be based on "* * * [t]he costs to the Government * * *."

In 1986, proposed fee increases for adjudication services were challenged in the Federal District Court for the District of Columbia on the grounds that the Attorney General lacked authority to impose fees for the services in question and that, even if the fees were legally permissible, the specific fees under challenge were arbitrarily excessive. In *Ayuda, Inc.* v. *Attorney General*, 661 F. Supp. 33 (D.D.C., 1987), the District Court rejected these arguments:

> Accordingly, it appearing that the service fees were established through appropriate administrative procedures after adequate cost analysis and with opportunity for public participation, and that they are in all respects consistent with the statutes being implemented, summary judgment must be granted to the Attorney General and denied to plaintiffs.

661 F.Supp. at 36.

In upholding the District Court decision, the Court of Appeals held that:

> In light of settled law, we are constrained to conclude that the INS fees at issue are for a "service or thing of value" which provides the recipients with a special benefit * * *. Since these procedures are triggered only at the instance of the individual who seeks, obviously, to benefit from them, this fee regime cannot in fairness be characterized as an INS effort to charge for activities that are carried on principally to benefit the public generally. The benefit is simply too direct and immediate to a specific, identifiable beneficiary to consider such services as constituting primarily a broad part of INS' overall mission to serve the public.

*Ayuda, Inc.* v. *Attorney General*, 848 F.2d 1297, at 1301 (D.C. Cir. 1988).

### *B. Office of Management and Budget (OMB) Guidelines*

OMB circular A–25, User Charges, states that as a general policy "a user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." The following discussion is provided:

> When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:
>
> (a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or
>
> (b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or
>
> (c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

Circular No. A–25, User Charges, Executive Office of the President, Office of Management and Budget, July 8, 1993, pp. 2–3.

### *C. Department of Justice Guidelines*

The Department of Justice issued guidance on User Fee Programs in April 1993. The guidance states that as a general policy "a charge shall be imposed to recover the full cost to the Federal Government of rendering a service that provides specific benefits to an identifiable recipient above and beyond those that accrue to the public at large." The following discussion is provided:

> Cost is a financial measurement of resources used in accomplishing a specified purpose, carrying out an activity, or completing a unit of work or a specific project * * *. Direct costs are those which are proximate and directly traceable to the unit of output for which the fee is charged. Indirect costs are those which are more distant, general in nature, and not directly traceable to the product or service produced.
>
> * * * [E]xisting legislation may require the inclusion of costs for selected activities not directly related to the unit of performance or product for which a fee is charged. Where this occurs, both the direct and indirect costs of such activities should be included in the cost computation.

User Fee Programs, Department of Justice, Justice Management Division, April 1993, pp. 3 and 12. The policies and procedures followed in the development of the proposed fee schedules are consistent with this guidance.

### *D. Ratemaking Principles*

The above-stated policies, as set forth by statute and more fully developed by OMB and the Department, comport with reasonable standards for user charges and are strongly supported by the

prescriptions of economic experts with widely recognized credentials in the field of ratemaking policy. Any other approach would burden taxpayers with costs that can be traced directly to the needs of specific individuals, not to society at large.

One of many similar statements on cost of service as a basic standard of reasonableness is stated as follows in the authoritative text by Bonbright, Danielsen, and Kamerschen:

> No writer whose views on public utility rates command respect purports to find a single yardstick by sole reference to which rates may be judged reasonable or socially desirable as distinguished from rates that are unreasonable or adverse to the public interest. A complex of tests of acceptability is required just as would be the case with the tests of a good automobile, a good income-tax law, or a good poem. Nevertheless, one standard of reasonable rates can fairly be said to outrank all others in the importance attached to it by experts and public opinion alike—the standard of costs of service, often qualified by the stipulation that the relevant cost is necessary, true (i.e., private and social) cost or cost reasonably or prudently incurred. * * *
>
> A cost standard of ratemaking has been most generally accepted in the regulation of the levels of rates charged by private utility companies. But even more significant is the widespread adherence to cost, or to some approximation of cost, as a basis of ratemaking under public ownership* * * *

Bonbright, Danielsen, and Kamerschen, Principles of Public Utility Rates, Public Utilities Reports, Inc., Arlington, Va., 2nd ed. 1988, pp. 109–110.

While the foregoing reference is extracted from a discussion of public utility rates, the rate standard cited also is applicable to other pricing situations that require cost recovery in a fair and reasonable manner.

**III. Examinations Fee Account**

This section describes the major programs funded by the Examinations Fee Account.

*A. Adjudications and Naturalization Program*

The function of this program is to process, adjudicate, and ultimately grant or deny applications and petitions for benefits provided under the immigration laws of the United States. Adjudications activities include processing applications for permanent resident status, petitions for relatives, temporary and permanent worker petitions, reentry permits, refugee travel documents, extensions of temporary stay, employment authorizations, and temporary protected status. Naturalization activities include the examination of aliens to determine their qualifications for naturalization, administration of the oath for citizenship, and issuance of citizenship documents.

*B. Refugees and Overseas Program*

The function of this program is to adjudicate refugee and asylum applications, conduct investigations for preference and relative visa petitions, and conduct other records checks and background investigations as are required at overseas INS offices. Officers assigned to this program also provide assistance to citizens and lawful permanent residents abroad regarding adoptions, immigration, or parole of alien spouses and children, and other benefits under the Immigration and Nationality Act. They also review requests for the Attorney General to grant humanitarian parole into the United States for deserving persons.

*C. Information and Records Management*

The Information and Records Management program provides a variety of services critical to the adjudications and naturalization processes. These services include: Creating, updating, storing, retrieving, and tracking alien files; responding to inquiries on application status; providing information to the public, both in-person and by telephone, on immigration-related matters; printing and distributing application forms and instructions and providing them to the public.

*D. Data and Communications*

The Data and Communications program develops and operates INS automated information systems which support the adjudications and naturalization program, and operates the identification card production facility. Adjudications and naturalization support systems are currently being integrated and consolidated into the Computer Linked Application Information Management System (CLAIMS), which provides adjudication support to service centers, district offices, and ports of entry. The system, which is operating in the service centers and is being installed in other field offices, reduces application processing time and response time to inquiries.

**IV. Fee Setting Procedures**

This section provides a description of INS fee-setting procedures, including an explanation of the cost bases for setting fees. Descriptions of the examinations fees and their cost components and an explanation of the procedures employed by INS to calculate the costs are included.

*A. History of Current Examinations Fees*

Policies pertaining to the assessment of INS user fees and their underlying costs have evolved over 25 years, beginning in 1968. The Examinations Fee Account itself has a more recent history, starting in 1989. Prior to 1989, all examinations fee revenues were treated as general revenues of the Federal Government. They are now credited to the Examinations Fee Account and used to fund related services.

Procedures to compute examinations fees involve the development and summation of three cost components: direct costs, indirect costs, and a surcharge to recover the costs of the Refugees and Overseas program. These three cost components are described more fully below.

Salient developments preceding the analyses that led to this proposed rule include the issuance in December 1992 of an audit report prepared by the Office of the Inspector General (OIG) of the Department of Justice. That report, entitled "Controls Over Established User Fee Accounts in the Immigration and Naturalization Service" (DOJ OIG Audit Report No. 93–3), stated that INS's accounting system did not identify properly all costs that ought to be recovered from user fee accounts. This view is summarized below:

> The review of actual program costs disclosed that all identified costs were charged to the proper user fee accounts. However, the INS accounting system does not provide usable cost data applicable to the user fee program and INS program managers had not identified all the direct program costs that should have been reimbursed from the user fee accounts. In addition, various INS units providing indirect support of personnel and services were not receiving user fee reimbursement commensurate with the level of resources expended * * * Since valid direct and indirect program costs went unidentified, appropriated funds essentially subsidized user fee related program costs that should have been reimbursed from user fee revenue.

DOJ OIG Audit Report No. 93–3, at p. i.

The finding that all program costs were not being recovered from user fee accounts triggered several actions by INS that culminated in the current proposed rule. At the same time that the OIG was conducting its audit, a senior Justice Department official reviewed the fee-setting process and proposed changes. As a result, the OIG deferred additional work in this area. According to the audit report:

> A plan was developed and approved and the same Justice official was detailed to compile user fee costs, revise fee schedules

as necessary to collect revenues sufficient to make each account self-sustaining, and obtain Congressional approval to reprogram INS appropriations accordingly. This project was initiated in March 1992 and is scheduled to be completed by the end of FY 1992. Since the project covered most of the problem areas disclosed by our audit, we deferred additional audit work in this area.

DOJ OIG Audit Report No. 93–3, at p. ii.

The review of the process conducted during 1992 consisted of a detailed survey and extensive consultations with all INS program offices to review the extent to which they provide services to fee account activities, whether they were commensurately reimbursed for those services, and whether specific service improvement investments would be appropriate if additional fee account revenues were available.

An initial reallocation (reprogramming) of program costs proposed earlier by the Attorney General was approved by Congress, with the effect of properly assigning some costs of user fee activities to the fee accounts. The budget enacted by Congress for fiscal year 1993 reflected these reallocations.

The 1992 review found that the Attorney General's reprogramming had substantially corrected the assignment of costs identifiable at that point as related to fee account activities, with two exceptions: The costs of legal proceedings and the costs of management and administration. In the case of these two programs, some costs are being charged to fee accounts, but not enough to cover the substantial work associated with the fee account activities.

The review also concluded that although a number of investments were recommended by review participants, the recommendations generally anticipated actions that were planned in future budget cycles. Therefore the investments would generally be addressed as part of INS's normal budget review process, rather than as a part of the current fee adjustment process.

This proposed fee increase incorporates the results of this extensive review of INS programs, inflationary cost increases since the last general fee increase in April 1991, and the projected costs of presently budgeted program investments to improve services to INS's customers.

*B. Costs*

1. Cost Components

OMB Circular A–25, in its discussion of cost determination for purposes of setting fees, provides that "user charges will be sufficient to recover the full cost to the Federal Government * * * of providing the service * * *." It also provides that those costs shall include an "appropriate share of the management and supervisory costs." Circular No. A–25, User Charges, Executive Office of the President, Office of Management and Budget, July 8, 1993, pp. 3–5. Direct costs are only the most readily identifiable costs of providing user services. Each service also has indirect components which, although not as easily identifiable, are nevertheless causally related to the costs of providing services. Each examinations fee has three components: direct costs, indirect costs, and a surcharge to cover the costs of the Refugees and Overseas Program.

*a. Direct costs.* Direct costs are those costs directly related to the processing of a particular application form for a particular benefit. Direct costs include: the pay of the Adjudications officers and clerical staff working on each type of application and the costs of their associated personnel benefits; the costs of Federal Bureau of Investigation (FBI) name and fingerprint checks; where applicable, the costs by application of naturalization ceremonies conducted by United States Courts; and the costs of INS immigration document and card production. The pay costs are calculated by multiplying average adjudications processing time by the hourly pay for the average grade levels of adjudicators and clerks.

*b. Indirect costs.* Indirect costs reflected in the current fee structure are defined as the costs of supervisory, management, and administrative activities, related staff training, records, data processing, and files services, legal services, and space and support costs of providing immigration benefits under the Immigration and Nationality Act and related statutes.

Indirect costs also include costs in the management and administration portion of the INS budget, such as the costs of the personnel administration work needed to recruit and pay the officers and clerks who process customers' applications for benefits. The activities associated with these costs are no less essential to providing INS services to its customers than are the direct costs. These indirect costs are distinguished only by the somewhat greater complexity of determining the portion of such costs that are attributable to work done for fee-paying customers. In addition, indirect costs include the cost of auditing the Examinations Fee Account by the Department of Justice Inspector General.

*c. Surcharge.* The costs to carry out the Refugees and Overseas Program are borne by the Examinations Fee Account, at the direction of Congress. See section 286(m) of the INA, 8 U.S.C. 1356(m). These costs are treated as a surcharge that is added to the examinations fees.

2. Cost Transfers

A transfer is the shift of costs from one account to another. Transfers arise when costs from one account are identified as appropriately charged to another account. Transfers have been prompted by cost reviews such as that conducted in 1992 to refine the identification of costs attributable to user fee activities. Transfers found in the 1992 review to be necessary to meet statutory requirements are as follows:

a. *Legal proceedings.* A review of INS workload statistics identified the equivalent of 78 additional positions and work years of legal activities that properly should be charged to Examinations Fee Account activities. These legal activities include appearances before the Immigration Court for hearings related to asylum, adjustment of status, registry, waivers of inadmissibility, and rescission; the preparation of arguments and briefs for such hearings; appearances before Federal and state courts for contested naturalization hearings; appearances in U.S. District Courts in mandamus and declaratory judgment cases; preparation of arguments, briefs, and litigation reports in such cases; and associated legal consultations and preparation of legal memoranda. Also included are resources for support staff, and Special Assistant U.S. Attorney, Regional Counsel, and District Counsel positions chargeable for Examinations work. INS will propose to transfer these 78 positions, work years, and associated costs from the Salaries and Expenses appropriation to the Examinations Fee Account. Copies of this review are available upon request.

b. *Management and administration.* Management and Administration (M&A) resources have been assigned to the Examinations Fee Account using a "distribution-key" concept. Distribution-key is a term borrowed from the U.S. Postal Service's cost allocation practice. With this practice, costs which cannot be directly related to a certain class or account are distributed on the basis of costs which can be directly assigned. For example, in the case of mail processing, the costs associated with supervision of mail clerks (where no direct statistical assignment mechanisms are in place) are distributed on the same basis as are the costs for the mail clerks themselves

(where statistical workload measurement systems are in place). See, for example, Postal Rate Commission, Docket No. R90–1, United States Postal Service Library Reference F–1, Summary Description of USPS Cost Development by Segments and Components, fiscal year 1988, pp. 2–2 through 2–5.

For this process, a full-time equivalent work year (referred to as "work year" or "FTE") was chosen as the distribution-key. Costs were allocated based upon the percentage distribution of work years between the Examinations Fee Account and all other accounts in INS. See Exhibit 1, Derivation of Management and Administration Distribution Key.

At INS, examinations officer work years relate directly to workload volume, and the management and administration work that supports the examinations officers are dependent upon the number of officer work years. Work years are a useful gauge of the resources needed in each program because they include the contributions of both full and part-time staff. Other possible distribution-keys (positions and dollars) are believed to be inferior to work years. Positions alone are inferior as a distribution-key because they include only full-time permanent staff and vacancies. The use of positions would understate proper assignment levels to the extent that part-time workers are ignored, but would overstate proper assignment levels to the extent that vacancies are included. Dollars are also an inferior distribution-key because they may be skewed by the inclusion of one-time expenditures or other unique costs.

The distribution-key concept is consistent with the guidance provided by the Department. The following discussion is provided:

> For each overhead activity * * *, estimate, on a rational basis, approximately what percentage of the amount is indirectly relatable or incidental to the functions and costs * * *. The percentage assigned ordinarily should be based on the relative amount of time or outputs traceable to the particular unit of performance. In the case of very general, non-traceable activities (e.g., executive direction or congressional and public affairs), where there are labor-intensive performance units, general or non-traceable cost allocations may be predicated on relative employment (costs or full time personnel equivalents) devoted directly to the fee account revenue-generating programs vis-a-vis all other programs.

User Fee Programs, Department of Justice, Justice Management Division, April 1993, pp. 10–11.

To distribute costs properly, based on the distribution-key concept, INS will propose to transfer 143 positions, 133 work years, and associated costs from the Salaries and Expenses appropriation to the Examinations Fee Account. However, INS will not propose to use all of the resources potentially available as a result of the transfer to correct documented deficiencies in M&A program support activities in fiscal year 1994. Rather, INS will propose to use part of these resources to support additional work years for the Adjudications and Naturalization Program to ensure good service during the period of transition when more work will be shifted from district offices to service centers (the "Direct Mail III" program). INS will defer full use of the resources for program support activities until fiscal year 1995 or 1996, as conditions warrant.

3. Investments to Improve Service Quality

Service quality improvements are made possible by investments in staff additions and capital assets. One investment which will be financed by the examinations fee increase will be the continued expansion of INS service center operations. These expanded automation-intensive facilities will improve productivity and reduce delays in application processing operations. The transfer of work now conducted at the district offices to the service centers will improve processing at district offices and allow district office staff to devote more time to those applications which require personal contact with people applying for benefits.

*C. Proposed Fee Increase*

The need for increased revenues which underlies the proposed fee increase was calculated by adjusting the projected total costs of providing adjudications and naturalization services to include the transfers and service improvements described above, and comparing the costs to the revenue projected under the current fee schedule. Because they are reflected in INS budget projections, the calculation incorporates the effects of inflation-based cost increases that have occurred since the last general fee increase in April 1991 and all other mandatory adjustments to the cost base. This calculation yields a required percentage revenue increase which, with limited exceptions, was then uniformly applied to the existing schedule of fees. The exceptions to this procedure, required because of (i) the consolidation of forms and (ii) certain technical adjustments, are described below.

Exhibit 2, Projected Examinations Fee Account, shows the projected fiscal year 1994 resource allocations to the Examinations Fee Account. The projected transfers from the Salaries and Expenses appropriation, which are incorporated in Exhibit 2, are shown in Exhibit 3, Projected Transfers From Salaries and Expenses Appropriation to Examinations Fee Account.

Exhibit 4, Proposed Examinations Fee Revenue Adjustment, shows how the proposed fee increase was computed. The calculations are based on the projected fiscal year 1994 budget, and begin with an estimate of the funds that will remain in the Examinations Fee Account at the close of fiscal year 1993.

INS projects that $18.7 million will be carried forward in the Examinations Fee Account from fiscal year 1993 to fiscal year 1994 (Line 1). Revenue of $314.7 million is anticipated in fiscal year 1994 at the fee levels currently in place (Line 2). The sum of these two amounts is $333.4 million, which is the total amount projected to be available for the Examinations Fee Account for fiscal year 1994 in the absence of a fee increase (Line 3).

INS projects that the costs of Examinations Fee Account programs for fiscal year 1994 will be $331.5 million (Line 4). Because of the impossibility of predicting precisely the number of applications and associated revenue and workload in any given time period, and in order to ensure that there are sufficient resources to adjudicate applications, including those currently in process, INS has determined the need to retain a balance equivalent to one month of costs, or $27.6 million (Line 5). The remainder of that amount, if any, would be carried forward to the next fiscal year to continue processing applications. The existence of a carryforward balance is consistent with INS' past practice. As explained below, technical adjustments were applied to the fee base for some forms to ensure fair distribution of costs among users. The net effect of those adjustments is subtracted so that they will have no net impact on the aggregate INS fee revenue requirement (Line 6). The algebraic sum of these three amounts is the total revenue requirement of $356.9 million (Line 7).

Subtracting the revenue requirement from the funds available shows a revenue shortfall of $23.5 million (Line 8). Dividing this shortfall by the revenues projected under the current fee schedule produces the percentage by which the fees must be increased, 7.5 percent (Line 9).

*D. Computation of the Fees*

The proposed fees for most Immigration and Naturalization forms

were calculated by applying the increase of 7.5 percent to the current fee, and rounding the result upward or downward to the nearest $5.00. Fees adjusted in this manner are shown on Exhibit 5.

There were two exceptions to this computational procedure. One exception is a consequence of forms consolidation actions affecting the Petition for a Nonimmigrant Worker, I-129, where procedures and charges have been altered in response to experience with the consolidated forms and suggestions from users. The new charges associated with the I-129 are described below, and presented in Exhibit 6. The other exception is associated with technical adjustments to the computational base for certain forms, as described below and shown in Exhibit 7.

1. Petition For a Nonimmigrant Worker, I-129

On October 4, 1991, INS published a proposed revision of Form I-129, Petition for a Nonimmigrant Worker (56 FR 50350). This revision consolidated a number of separate application and petition processes that had previously been handled on separate application forms, each with separate fees. To the extent possible, the new form retained the original fee structure, which was based upon the costs associated with each separate adjudication.

After the consolidation of Form I-129, INS received a number of comments and questions regarding the I-129 process. As a result, INS proposes to revise Form I-129 to incorporate several additional processes created by the Immigration Act of 1990 (Pub. L. 101-649) and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102-232), and to simplify the application procedures in response to public comments. For example, INS proposes to revise procedures in instances where an employer is filing for one worker to allow the worker's dependents to be included in the petition instead of requiring separate applications. In addition, INS would no longer require separate petitions for groups where the members will be applying for visas at more than one consulate or for visa-exempt workers applying for admission at different ports of entry.

Current Form I-129 Fee Structure:

The fee for a Petition for a Nonimmigrant Worker consists of a base fee of $70 plus either:

—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;

—$80 per worker if requesting a change of status; or

—$50 per worker if requesting an extension of stay.

Proposed Form I-129 Fee Structure:

The proposed fee for a Petition for a Nonimmigrant Worker is $120 per petition plus $10 for each dependent if filing for one worker, and $100 per petition plus $20 for each worker if filing for more than one worker. The changes simplify the application process and more fairly distribute the costs of processing.

Because INS has consolidated actions which were previously separate, data are not yet available for establishing a fee based upon actual cost experience. Therefore, the proposed fee is based upon estimates of these costs.

2. Technical Adjustments to Computation Base for Certain Applications

Before undertaking the percentage computations to arrive at the fee schedules proposed in this rule, INS reviewed the cost information supporting the current fee schedule. The information on processing times and related costs, the costs of FBI name and fingerprint checks, the costs of naturalization ceremonies conducted by United States Courts, the costs of INS immigration document and card production, the indirect costs and the surcharge were examined. (Copies of this analysis are available upon request.) Some differences were found between the current fees and the statistical information on the associated costs. The differences are small, and probably result from data corrections after the fees were computed.

In order to ensure fair distribution of costs among users, INS adjusted, upward or downward as necessary, the current fees for forms where differences were identified, before computing the proposed fee increase for those forms. INS ensured that this process had no net effect on the total revenue increase proposal by deducting the revenue increase that would be caused by the technical adjustments from the total revenue requirement before calculating the percentage fee revenue adjustment that would be applied to all forms. As previously noted, this deduction appears on Line 6 of Exhibit 4, where the fee revision requirement is calculated.

## V. Proposed Fee Adjustments

Proposed fee adjustments are shown in Exhibits 5-7.

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

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

### List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7, paragraph (b)(1) is amended by revising the entries listed to read as follows:

**§ 103.7 Fees.**

* * * * *

(b) * * *

(1) * * *

Form I-17. For filing application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$140.

Form I-90. For filing application for Alien Registration Receipt Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name—$75.

Form I-102. For filing application (Form I-102) for Arrival-Departure Record (Form I-94) or Crewman's Landing Permit (Form I-95), in lieu of one lost, mutilated, or destroyed—$65.

* * * * *

Form I-129. For filing a petition for a nonimmigrant worker—$120 per petition plus $10 for each dependent if

filing for one worker; $100 per petition plus $20 for each worker if filing for more than one worker.

Form I–192F. For filing petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act—$75.

* * * * *

Form I–130. For filing petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$80.

Form I–131. For filing application for issuance of reentry permit—$70.

Form I–140. For filing petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$75.

Form I–191. For filing application for discretionary relief under section 212(c) of the Act—$90.

Form I–192. For filing application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government—$90.

Form I–193. For filing application for waiver of passport and/or visa—$95.

Form I–212. For filing application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$95.

* * * * *

Form I–360. For filing petition for an Amerasian, Widow(er), or Special Immigrant—$80, except there is no fee for a petition seeking classification as an Amerasian.

Form I–485. For filing application for permanent residence status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$155.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$75 plus $10 per co-applicant.

* * * * *

Form I–600. For filing petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$155.

Form I–600A. For filing application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$155.

Form I–601. For filing application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections)—$95.

Form I–612. For filing application for waiver of the foreign-residence requirement under section 212(e) of the Act—$95.

* * * * *

Form I–751. For filing an application to remove the conditions on residence which is based on marriage—$80.

* * * * *

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$70.

* * * * *

Form I–817. For filing application for voluntary departure under the Family Unity Program—$80. The maximum amount payable by the members of a family filing their applications concurrently shall be $225.

* * * * *

Form N–300. For filing application for declaration of intention—$75.

* * * * *

Form N–400. For filing an application for naturalization—$95. For filing an application for naturalization under section 405 of the Immigration Act of 1990, if the applicant will be interviewed in the Philippines—$120.

* * * * *

Form N–470. For filing application for section 316(b) or 317 of the Act benefits—$115.

Form N–565. For filing application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343 (b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$65.

Form N–600. For filing application for certificate of citizenship under section 309(c) or section 341 of the Act—$100.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$80.

Form N–644. For filing an application for posthumous citizenship—$80.

* * * * *

Dated: December 23, 1993.

**Janet Reno,**

*Attorney General.*

**Exhibit 1**

**Note:** The following exhibit will not appear in the Code of Federal Regulations.

DERIVATION OF MANAGEMENT AND ADMINISTRATION (M&A) DISTRIBUTION KEY

[Fiscal Year 1994]

| Description | Full-Time Equivalent Work Years (FTE) | | |
|---|---|---|---|
| | Examinations Fee Account | All Other INS Accounts | Total |
| Non-M&A Work Years | 3,951 | 13,291 | 17,242 |
| Percent | 22.9 | 77.1 | 100 |

**Exhibit 2**

**Note:** The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT—PROJECTED POSITIONS, WORK YEARS AND DOLLARS

[Fiscal Year 1994]

| Program | Positions | Work years | Dollars ($000) |
|---|---|---|---|
| Inspections | 241 | 240 | 15,847 |
| Border Patrol | ..... | ..... | ..... |
| Investigations | 100 | 100 | 7,533 |
| Detention & Deportation | ..... | ..... | ..... |
| Adjudications & Naturalization | 2,258 | 2,129 | 145,859 |
| Refugees & Overseas | 412 | 472 | 40,761 |
| Training | 22 | 20 | 3,153 |
| Data & Communications | 72 | 68 | 34,863 |
| Information & Records Management | 736 | 801 | 51,359 |
| Intelligence | 8 | 8 | 549 |
| Legal Proceedings | 116 | 112 | 9,432 |
| Construction & Engineering | 1 | 1 | 178 |
| Management & Administration | 213 | 204 | 21,939 |
| Total | 4,179 | 4,155 | 331,473 |

Exhibit 3

Note: The following exhibit will not appear in the Code of Federal Regulations.

PROJECTED TRANSFERS; SALARIES AND EXPENSES APPROPRIATION TO EXAMINATIONS FEE ACCOUNT—POSITIONS, WORK YEARS AND DOLLARS

[Fiscal Year 1994]

| Program | Positions | Work years | Dollars ($000) |
|---|---|---|---|
| Inspections | ..... | ..... | ..... |
| Border Patrol | ..... | ..... | ..... |
| Investigations | ..... | ..... | ..... |
| Detention & Deportation | ..... | ..... | ..... |
| Adjudications & Naturalization | ..... | ..... | ..... |
| Refugees & Overseas | ..... | ..... | ..... |
| Training | ..... | ..... | ..... |
| Data & Communications | ..... | ..... | ..... |
| Information & Records Management | ..... | ..... | ..... |
| Intelligence | ..... | ..... | ..... |
| Legal Proceedings | ..... | ..... | ..... |
| Construction & Engineering | 78 | 78 | 6,304 |
| Management & Administration [1] | ..... | ..... | ..... |
| Total | 126 | 117 | 12,311 |
| | 204 | 195 | $18,615 |

[1] To distribute costs properly, INS would transfer 143 positions, 133 work years and associated costs. However, in FY 1994 INS will propose to transfer only 126 positions, 117 work years and associated costs, so that the difference can be used to support additional work years in the adjudications and naturalization program during the period of transition when work is shifted to service centers.

Exhibit 4

Note: The following exhibit will not appear in the Code of Federal Regulations.

PROPOSED EXAMINATIONS FEE REVENUE ADJUSTMENT

[Fiscal Year 1994]

| Line | Description | Dollars (000) |
|---|---|---|
| | Funds Availability | |
| 1 | Carry-forward from FY 1993 | $18,677 |
| 2 | Anticipated FY 1994 Revenue at Current Fee Levels | 314,741 |
| 3 | Projected FY 1994 Funds Availability (Line 1 + Line 2) | 333,418 |
| | Costs | |
| 4 | Funding Requirements (1994 Costs) | 331,473 |
| 5 | Planned Carry-forward to FY 1995 (1 months' cost) | 27,623 |
| 6 | Less: Effect of Technical Adjustments | 2,180 |
| 7 | Total Revenue Requirement (Line 4 + Line 5 − Line 6) | 356,916 |
| | Impact on Fee Schedule | |
| 8 | Additional Revenue Required (Line 3 − Line 7) | 23,498 |
| 9 | Fee Revenue Adjustment Required (Line 8 ÷ Line 2) | 7.5% |

**Exhibit 5**

**Note:** The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

[Current Fees and Proposed Fees]

| Form No. | Form name/description | Current fee | Proposed fee |
|---|---|---|---|
| I–17 | Petition for Approval of School for Attendance by Nonimmigrant Students | $130 | 140 |
| I–90 | Application to Replace Alien Registration Card | 70 | 75 |
| I–130 | Petition for Alien Relative | 75 | 80 |
| I–131 | Application for Travel Document | 65 | 70 |
| I–140 | Immigrant Petition for Alien Worker | 70 | 75 |
| I–192 | Application for Advance Permission to Enter as Nonimmigrant | 85 | 90 |
| I–193 | Application for Waiver of Passpart and/or Visa | 90 | 95 |
| I–212 | Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal | 90 | 95 |
| I–360 | Petition for Amerasian, Widow(er), or Special Immigrant (except for a petition seeking classification as an Amerasian in which case the fee is waived). | 75 | 80 |
| I–485 | Application to Register Permanent Residence or Adjust Status | | |
| | If 14 years of age or older | 120 | 130 |
| | If under 14 years of age | 95 | 100 |
| I–539 | Application to extend/Change Nonimmigrant Status | 70 | 75 |
| I–601 | Application for Waiver of Grounds of Excludability | 90 | 95 |
| I–612 | Application for Waiver of the Foreign Residence Requirement | 90 | 95 |
| I–751 | Petition to Remove the Condition on Residence | 75 | 80 |
| I–817 | Application for Voluntary Departure Under Family Unity Program | 75 | 80 |
| N–300 | Application to File Declaration of Intention | 70 | 75 |
| N–400 | Application for Naturalization | 90 | 95 |

**Exhibit 6**

**Note:** The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

Current Fee and Proposed Fee

Petition for a Nonimmigrant Worker (I–129)

Current Fee Structure:

The fee for a petition is a base fee of $70 plus either:

—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;

—$80 per worker if requesting a change of status; or

—$50 per worker if requesting an extension of stay.

Proposed Fee Structure:

If filing for one worker, $120 per petition plus $10 for each dependent.

If filing for more than one worker, $100 per petition plus $20 for each worker.

**Exhibit 7**

**Note:** The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

[Current Fee and Proposed Fee, with Technical Adjustments]

| Form No. | Form name/description | Current fee | Adjusted fee | Proposed fee |
|---|---|---|---|---|
| I–102 | Application for Replacement/Initial Nonimmigrant Arrival Departure Document | $50 | $60 | $65 |
| I–129F | Petition for Alien Fiance(e) | 75 | 70 | 75 |
| I–191 | Application for Advance Permission to Return to Unrelinquished Domicile | 90 | 85 | 90 |
| I–526 | Immigrant Petition by Alien Entrepreneur | 140 | 145 | 155 |
| I–600 | Petition to Classify Orphan as an Immediate Relative | 140 | 145 | 155 |
| I–600A | Application for Advance Processing of Orphan Petition | 140 | 145 | 155 |
| I–765 | Application for Employment Authorization | 60 | 65 | 70 |
| N–470 | Application to Preserve Residence for Naturalization Purposes | 90 | 105 | 115 |
| N–565 | Application for Replacement Naturalization/Citizenship Document | 50 | 60 | 65 |
| N–600 | Application for Certification of Citizenship | 90 | 95 | 100 |
| N–643 | Application for Certificate of Citizenship in Behalf of an Adopted Child | 85 | 75 | 80 |
| N–644 | Application for Posthumous Citizenship | 60 | 75 | 80 |

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BILLING CODE 4410-01-M

## 8 CFR Parts 103, 211, 216, 235, and 242

[INS No. 1429-92]

RIN 1115-AC53

## Conditional Permanent Resident Regulations for Alien Entrepreneurs, Spouses, and Children

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule implements provisions of section 121 of the Immigration Act of 1990, by providing for conditional resident status to certain alien entrepreneurs, their spouses, and their unmarried minor children. It also provides for the removal of the conditional basis of such status through the filing of a petition by the alien entrepreneur. This rule will allow alien entrepreneurs to continue their commercial enterprises while providing jobs in the United States.

DATES: Written comments must be submitted on or before February 9, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1429-92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (the Service) notes that the legislative history on conditional permanent residence status for alien entrepreneurs is limited in its guidance; therefore, this rule relies heavily on the language of the statute itself. Congress, however, did indicate that the two-year conditional status for alien entrepreneurs exists for the primary purpose of ensuring that "all aliens receiving visas in this section * * * continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained." S. Rep. No. 101-55, 101st Cong., 1st Sess. 22 (1989).

Accordingly the Service proposes to amend 8 CFR parts 211, 216, 235, and 242 by providing conditional permanent resident status for certain alien entrepreneurs, their spouses, and their children.

### Petition for Removal of Conditions

The Immigration and Nationality Act (the Act), as amended by the Immigration Act of 1990, Public Law 101-649, November 29, 1990, requires that an alien entrepreneur file a petition for removal of conditions during the 90-day period before the second anniversary of the alien's obtaining conditional permanent resident status (section 216A(d)(2)(A) of the Act). The petition should include any spouse or children accorded conditional permanent resident status. Children who have reached the age of twenty-one or who have married during the period of conditional permanent residence will remain eligible for removal of conditions. The statute also calls for a personal interview of the alien within 90 days after the date the alien files the petition for removal of conditions. The Service may waive the requirement of an interview in appropriate cases (section 216A(d)(3) of the Act).

This rule provides that the required petition shall be filed with the Service Center having jurisdiction over the location of the alien's commercial enterprise. The petition will be reviewed by the Service Center, and a determination will be made on the necessity of an interview. If the Service Center director determines in his or her discretion that a decision may be made on the basis of the petition and accompanying evidence without the necessity of an interview, the decision on the petition will be rendered at the Service Center. If the director determines that an interview is needed, the Service Center director will schedule the alien for an interview to be held at the local Service district office or sub-office having jurisdiction over the alien entrepreneur's commercial enterprise in the United States. The local district office will then take responsibility for the case to its conclusion.

### Decision on Petition

If the alien's petition is approved, the conditional basis of the beneficiaries' permanent resident status will be removed as of the second anniversary of the alien's entry as a conditional permanent resident. Denial of a petition will result in termination of the alien's lawful permanent resident status and issuance by the Service of an order to show cause why the alien should not be deported from the United States. There is no appeal from this denial, but the alien may seek review of the decision by the immigration judge in deportation proceedings. In such deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true.

The Service explored the possibility of establishing by regulation some form of hardship waiver similar to that set forth at 8 CFR 216.5 for removal of conditions for certain alien spouses and sons and daughters. The Service has concluded that such a waiver cannot, consistent with the statute, be created by regulation for alien entrepreneurs. Section 216A(c)(3)(C) of the Act sets out a mandatory instruction: The Attorney General shall terminate the permanent resident status of an alien entrepreneur who has failed to comply with the requirements for removal of conditions. Unlike section 216, section 216A of the Act does not provide for the waiver of these requirements in cases of hardship.

Although the statute does not provide for a waiver of requirements for removal of conditions for alien entrepreneurs, the requirement that an alien entrepreneur has sustained his or her investment of the requisite capital during the two years of conditional residence will be interpreted flexibly. The alien entrepreneur will be considered to have "sustained" the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. This liberal interpretation of the term "sustained" in section 216A(a)(1)(C) of the Act permits the Service maximum flexibility in determining whether the prerequisites for removal of the conditions have been met in light of the congressional intent underlying this provision. The Service recognizes that a bona-fide and good faith investment may not meet all of the expectations envisioned when the alien entrepreneur obtained conditional residence status. For example, the fact that an alien entrepreneur has less than the requisite capital invested in the enterprise at the end of the two-year conditional period would not necessarily require the denial of the petition to remove conditions. The petition could be granted if the alien entrepreneur had invested a substantial portion of the requisite capital, thereby demonstrating that he or she was actively sustaining his or her investment in the enterprise as required by the statute. The determination of whether

an alien entrepreneur had invested a substantial portion of the requisite capital in good faith will be made on a case-by-case basis. The proposed rule reflects this standard at 8 CFR 216.6(a)(4)(iii) and 8 CFR 216.6(c)(1)(iii).

The following example illustrates how the alien entrepreneur can "substantially meet" the capital investment requirement. An alien entrepreneur is granted conditional residence based on a business plan which envisioned an investment of $1.2 million. At the end of the conditional residence period, he or she has invested only $800,000 in a non-targeted employment area, because through circumstances beyond the alien's control, construction of a facility took longer than anticipated. The Service may remove the conditions, if the entrepreneur can show that he or she can and will invest the additional capital within a reasonable time to complete the investment. On the other hand, if the entrepreneur cannot show that he or she will be able to generate additional capital within a reasonable time, regardless of his or her good-faith efforts, the Service will not remove the conditions.

In determining whether an alien entrepreneur has demonstrated that he or she invested in good faith, the Service will examine his or her intent based on both objective and subjective standards. The following example illustrates the "good faith" analysis. An entrepreneur invests $600,000 in a non-targeted employment area prior to obtaining conditional residence, but is unable to provide the additional capital as envisioned in the Form I–526 application. At the time he or she obtained conditional residence, he or she had no realistic prospect of obtaining funds to meet the capital investment requirement and in fact is unable to acquire the additional $400,000 required to complete the investment. Even though the entrepreneur sincerely wished to make the investment succeed, under the objective part of the good faith analysis, the entrepreneur will be unable to establish that he or she substantially met the capital investment requirement in good faith.

This rule also permits the director for good cause to remove conditions for the spouse and/or unmarried minor children of a deceased principal alien entrepreneur. If the spouse and/or children can show that, despite the entrepreneur's death, the requirements for removal of conditions have been met, the director may approve the petition and remove the conditions. This procedure makes humanitarian as well as economic sense and fufills the goals of the statute in that the economy of the United States will have benefited in the manner sought by Congress notwithstanding the death of the principal entrepreneur.

**Other Reasons for Termination**

The statute calls for termination of the alien's conditional permanent residence status during the two-year period if the Service determines: That establishment of the new commercial enterprise was for the sole purpose of evading United States immigration laws; that the new commercial enterprise in fact was not established; that the alien did not invest or was not in the process of investing the prescribed capital; that the alien was not sustaining the new commercial enterprise or the investment of capital; or that the alien was not otherwise conforming to the requirements of the status (section 216A(b)(1) of the Act). If the Service determines any of the foregoing, the alien's status will be terminated and an order to show cause will be issued. The alien may request review of this decision in deportation proceedings. In such proceedings, the burden of proof will rest with the Service to establish by a preponderance of the evidence that one of the foregoing reasons for termination is true.

Termination will also result, and an order to show cause will be issued, if the alien enterpreneur fails to file the required petition for removal of conditions or, without good cause, fails to appear for a personal interview when requested by the Service (section 216A(c)(2) of the Act). The decision may be reviewed in deportation proceedings, but, in either instance, the burden will rest with the alien to show compliance with the filing and interview requirments. The Service may accept and consider a late petition if the alien demonstrates good cause and extenuating circumstances for having failed to file a timely petition. Furthermore, the Service may stay deportation proceedings and consider a petition for an alien who is the subject of deportation proceedings for failure to file a timely petition if the alien demonstrates good cause and extenuating circumstances.

Finally, the legislative history of this provision at S. Rep. No. 101–55, 101st Cong., 1st Sess. 21 (1989) indicates Congress's wish that "* * * processing of an individual visa not continue if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs)." This position is clearly part of Congress's general policy to penalize one who prospers as a result of an illegal enterprise. That policy is evidenced elsewhere in the federal law, such as the statute which defines money laundering crimes as aggravated felonies, 8 U.S.C. 1101(a)(43), and the provisions of the United States Code which provide for the forfeiture of proceeds of unlawful activities to the United States, 21 U.S.C. 881(a)(6) (forfeiture of proceeds of controlled substance exchange) and 18 U.S.C. 1963(a)(3) (forfeiture of proceeds of racketeering activity or unlawful debt collection). In light of Congress's specific statement of intent with regard to this provision, and its overall policy concerning proceeds from illegal activities, termination of status will result at any time during the two-year conditional residence period or at the time a petition for removal of conditions is filed, if the Service determines that the alien's investment funds have been obtained through other than legal means.

**Application Fee**

In accordance with Office of Management and Budget Circular A–25, *User Charges*, "user charges will be sufficient to recover the full cost to the Federal Government * * * of providing the service * * *. Full cost shall be determined or estimated from the best available records of the agency * * *." The Service proposes to institute an application fee of $90.00 for filing form I–829. This fee is based on the estimated costs of processing the petition.

The I–829 fee will be one of many examinations fees assessed for providing adjudication and naturalization services. Each examinations fee has three components: Direct costs, indirect costs, and a surcharge to cover the costs of the International Affairs and Outreach Program (formerly the Refugees and Overseas Program).

Direct costs are those costs directly related to the processing of a particular application form for a particular benefit. Generally, direct costs include: The pay of the adjudications officers and clerical staff working on each type of application and the costs of their associated personnel benefits; the costs of Federal Bureau of Investigation name and fingerprint checks; where applicable, the costs by application of naturalization ceremonies conducted by the United States Courts; and the costs of INS immigration document and card production. The pay costs are calculated by multiplying average adjudications processing time by the hourly pay for the average grade level of adjudicators

and clerks. For the I–829, the direct costs include the pay costs of the adjudications officers and clerical staff and the costs of producing the Alien Registration Card.

Indirect costs are defined as the costs of supervisory, management, and administrative activities, related staff training, records, data processing, files services, legal services, and space and support costs of providing immigration benefits under the Immigration and Nationality Act and related statutes. Indirect costs also include costs in the management and administration portion of the INS budget, such as the costs of personnel administration work needed to recruit and pay the officers and clerks who process customers' applications for benefits. The activities associated with these costs are no less essential to providing INS services to its customers than are the direct costs. These indirect costs are distinguished only by the somewhat greater complexity of determining the portion of such costs that are attributable to work done for fee-paying customers.

The costs to carry out the International Affairs and Outreach Program are borne by the Examinations Fee Account, at the direction of Congress. See section 286(m) of the Act. These costs are treated as a surcharge that is added to the examinations fees.

The total cost of processing the I–829 is estimated at $90.45. The proposed fee was determined by rounding the total cost to the nearest $5.00. As the Service gains experience in processing this new application, the fee will be adjusted as necessary based on improved data.

**Technical Changes**

The proposed regulation also contains some minor technical changes resulting from the merger of Form I–751 and Form I–752 into the new Form I–751 (see 56 FR 55931 on October 30, 1991; 57 FR 6181 on February 21, 1992). This regulation eliminates reference to the Form I–752, which has been cancelled.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. Insofar as this proposed rule merely sets forth the procedures for terminating the conditional resident status of alien entrepreneurs already present in the country and for removing the conditional basis of permanent resident status for such persons, any impact the proposed rule will have on small business entities will be, at most, indirect or attenuated. This rule is not significant within the meaning of section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5. This rule also contains a new collection requirement which has been forwarded to OMB under the provisions of the Paperwork Reduction Act for review and clearance.

**List of Subjects**

*8 CFR Part 103*

Administrative practice and procedures Archives and records, Authority delegations (Government agencies), Bonding, Fees, Forms, Freedom of Information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Surety bonds.

*8 CFR Part 211*

Immigration, Passports and visas, Reporting and recordkeeping requirements.

*8 CFR Part 216*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 235*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 242*

Administrative practice and procedure, Aliens.

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

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252, note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by:

a. Removing the "Form I–752" from the listing of forms;

b. Revising the description for "Form I–751"; and by

c. Adding the "Form I–829", to the listing of forms, in proper numerical sequence, to read as follows:

**§ 103.7 Fees.**

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–751. For filing petition to remove the conditions on residence which is based on marriage—$75.00.

* * *

Form I–829. For filing petition by entrepreneur to remove conditions—$90.00.

* * * * *

## PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

3. The authority citation for part 211 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

4. In § 211.1, paragraph (b)(1)(i) introductory text is revised to read as follows:

**§ 211.1 Visas.**

* * * * *

(b)(1) * * *

(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelenquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisons of section 216 or 216A of the Act, whichever is applicable, or within six months of the date of filing a Petition to Remove the Conditions on Residence (Form I–751) or a Petition By Entrepreneur to Remove Conditions (Form I–829) pursuant to 8 CFR part 216, if the alien is in possession of a Service-issued receipt for such filing, and:

* * * * *

## PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

5. The heading for part 216 is revised as set forth above.

6. The authority citation for part 216 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

**§ 216.1 [Amended]**

7. Section 216.1 is amended in the first sentence by revising the phrase "section 216 of the Act" to read: "section 216 or 216A of the Act, whichever is applicable,".

**§ 216.2 [Amended]**

8. Section 216.2(b) is amended in the first sentence by adding the phrase "or he alien entrepreneur" between the words "spouse" and "must".

9. Section 216.2(c) is amended by adding the phrase ", or the alien entrepreneur" between the words "spouse" and "of"; and by removing the word "joint".

10. In § 216.3 is revised to read as follows:

**§ 216.3 Termination of conditional resident status.**

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a notice of Intent to Terminate an alien's conditional resident status, the director shall not adjudicate Form I–751 or Form I–829 until it has been determined that the alien's status shall not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the Notice of Termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 242 of the Act.

**§ 216.4 [Amended]**

11–12. In § 216.4, paragraph (a)(1) is amended by revising the phrase "a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status" in the first sentence, to read: "a Petition to Remove the Conditions on Residence".

13. In § 216.4, the heading is revised and paragraph (a)(1) is amended by adding a new sentence at the end of the paragraph to read as follows:

**§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.**

(a) * * *

(1) *General procedures.* * * *Upon receipt of a properly filed Form I–751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

* * * * *

**§ 216.4 [Amended]**

14. In § 216.4, paragraph (a)(2) is amended in the last sentence, by revising the phrase "an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752)" to read: "a separate Petition to Remove the Conditions on Residence (Form I–751)".

15. In § 216.4, paragraph (a)(6) is amended in the first sentence by removing the phrase "or Form I–752".

16. In § 216.5, the section heading and paragraph (a), introductory text, are revised to read as follows:

**§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.**

(a) *General.* A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file a Petition to Remove the Conditions on Residence (Form I–751), if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

* * * * *

**§ 216.5 [Amended]**

17. In § 216.5, paragraphs (b) and (c) are amended by revising the phrase "Form I–752" to read: "Form I–751".

18. A new § 216.6 is added to read as follows:

**§ 216.6 Petition by entrepreneur to remove conditional basis of lawful permanent resident status.**

(a) *Filing the petition*—(1) *General procedures.* A petition to remove the conditional basis of the permanent resident status of an alien accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the alien entrepreneur on Form I–829, Petition by Entrepreneur to Remove Conditions. The alien entrepreneur must file Form I–829 within the 90-day period preceding the second anniversary of his or her admission to the United States as a conditional permanent resident. Before Form I–829 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b)(1) of this chapter, and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the alien. Upon receipt of a properly filed Form I–829, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition. The entrepreneur's spouse and children should be included in the petition to remove conditions. Children who have reached the age of twenty-one or who have married during the period of conditional permanent residence may be included in the petition.

(2) *Jurisdiction.* Form I–829 must be filed with the regional service center

having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Physical presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and children, if necessary, to comply with the interview requirements contained in the Act. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien complies with the interview requirements described in paragraph (b) of this section. An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(4) *Documentation.* The petition for removal of conditions must be accompanied by the following evidence:

(i) Evidence that a commercial enterprise was established by the alien. Such evidence may include, but is not limited to, Federal income tax returns;

(ii) Evidence that the alien invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement; and

(iii) Evidence that the alien sustained the actions described in paragraphs (a)(4)(i) and (a)(4)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. Such evidence may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements.

(iv) Evidence that the alien created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien entrepreneur must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. Such evidence may include payroll records, relevant tax documents and Forms I–9.

(5) *Termination of status for failure to file petition.* Failure to properly file Form I–829 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of deportation proceedings. The director shall send a written notice of termination and an order to show cause to an alien entrepreneur who fails to timely file a petition for removal of conditions. No appeal shall lie from this decision; however, the alien may request a review of the determination during deportation proceedings. In deportation proceedings, the burden of proof shall rest with the alien to show by a preponderance of the evidence that he or she complied with the requirement to file the petition within the designated period. The director may deem the petition to have been filed prior to the second anniversary of the alien's obtaining conditional permanent residence status and accept and consider a late petition if the alien demonstrates to the director's satisfaction that failure to file a timely petition was for good cause and due to extenuating circumstances. If the late petition is filed prior to jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent resident status, remove the conditional basis of such status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(6) *Death of entrepreneur and effect on spouse and children.* If an entrepreneur dies during the prescribed two-year period of conditional permanent residence, the spouse and children of the entrepreneur will be eligible for removal of conditions if it can be demonstrated that the conditions set forth in paragraph (a)(4) of this section have been met.

(b) *Petition review*—(1) *Authority to waive interview.* The director of the service center shall review the Form I–829 and the supporting documents to determine whether to waive the interview required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, the service center director may waive the interview and approve the petition. If not so satisfied, then the service center director shall forward the petition to the district director having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States so that an interview of the alien entrepreneur may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* Unless waived, an interview relating to the Form I–829 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office that has jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Termination of status for failure to appear for interview.* If the alien fails to appear for an interview in connection with the petition when requested by the Service, the alien's permanent resident status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien will be provided with written notification of the termination and the reasons therefore, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish by a preponderance of the evidence that he or she complied with the interview requirements. If the alien has failed to appear for a scheduled interview, he or she may submit a written request to the district director asking that the interview be rescheduled or that the interview be waived. That request should explain his or her failure to appear for the scheduled interview, and if a request for waiver of the interview, the reasons such waiver should be granted. If the district director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the district director waives the interview, he or she shall restore the alien's conditional permanent resident status, cancel any outstanding order to show cause in accordance with § 242.7 of this chapter, and proceed to adjudicate the alien's petition. If the district director reschedules that alien's interview, he or she shall restore the alien's conditional residence status, and cancel any outstanding order to show cause in

accordance with § 242.7 of this chapter. If the interview is rescheduled at the request of the alien, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the date of interview, whichever is later. In adjudicating the petition, the director shall determine whether:

(i) A commercial enterprise was established by the alien;

(ii) The alien invested or was actively in the process of investing the requisite capital; and

(iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.

(iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

(2) If derogatory information is determined regarding any of these issues or it becomes known to the government that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the opportunity to rebut such information. If the alien entrepreneur fails to overcome such derogatory information or evidence the investment funds were obtained through other than legal means, the director may deny the petition, terminate the alien's permanent residence, and issue an order to show cause. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If, after initial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien's permanent resident status as of the second anniversary of the alien's entry as a conditional permanent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate district office for processing for a new Alien Registration Receipt Card, Form I–551, at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If, after initial review or after the interview, the director denies the petition, he or she shall provide written notice to the alien of the decision and the reasons(s) therefor, and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from this decision; however, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true and that the petition was properly denied.

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

19. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

20. In § 235.11, paragraphs (a) and (c) are revised to read as follows:

### § 235.11 Admission of conditional permanent residents.

(a) *General*—(1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Petition to Remove the Conditions on Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Petition by Entrepreneur to Remove Conditions (Form I–829) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

* * * * *

(c) *Expired conditional permanent resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Petition to Remove the Conditions on Residence (Form I–751) or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), a Petition by Entrepreneur to Remove Conditions (Form I–829). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under exclusion proceedings. However, in a case where conditional residence was based on a marriage, exclusion proceedings may be terminated and the alien may be admitted as a returning resident if the required petition (Form I-751) is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition (Form I–829) is filed by the alien entrepreneur and approved by the Service.

## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES, APPREHENSION, CUSTODY, HEARING, AND APPEAL

21. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

22. In § 242.17, paragraph (a) is revised to read as follows:

**§ 242.17 Ancillary matters, applications.**

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of parts 244, 245, and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with part 216 of the chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

* * * * *

Dated: November 5, 1993.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 94–391 Filed 1–7–94; 8:45 am]

BILLING CODE 4410–10–Ms

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## FEDERAL HOUSING FINANCE BOARD

## 12 CFR Part 960

**[No. 93–94]**

## Affordable Housing Program

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Board) is proposing to amend in its entirety its regulation governing the operation of the Affordable Housing Program (AHP or Program). The proposed rule modifies or carries forward requirements of the Board's existing AHP regulation, adds new provisions, and incorporates, with modifications, the provisions of the Board's existing policy guidelines governing the award of funds to loan funds and loan consortia.

**DATES:** Comments on this proposed rule must be received in writing on or before March 11, 1994.

**ADDRESSES:** Comments should be mailed to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** Diane E. Dorius, Deputy Director, or Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2576, or Sharon B. Like, Attorney-Advisor, (202) 408–2930, or Brandon B. Straus, Attorney-Advisor, (202) 408–2589, Office of Legal & External Affairs-Legal Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory and Regulatory Background

*A. General*

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Federal Home Loan Bank (Bank) to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. The Board is required to promulgate regulations governing the Program. 12 U.S.C. 1430(j)(1). The Board's existing regulation governing the operation of the AHP appears at part 960 of the Board's regulations. 12 CFR part 960.

This proposed rule amends the Board's existing AHP regulation to address operational issues that have arisen during the three and one-half years that the AHP has been in existence. The proposed amendments are intended to make the AHP more responsive to low-income housing needs in each of the twelve Federal Home Loan Bank Districts (Districts), to increase efficiency in the administration of the Program, and to enhance coordination of the AHP with other housing programs whose funds are used in conjunction with AHP funds. These issues are discussed in greater detail below in the Analysis of Proposed Rule section.

### II. Analysis of Proposed Rule

*A. AHP Application Approval Process*

The proposed rule makes a fundamental change to the AHP by vesting the Banks, instead of the Board, with the authority to approve AHP applications. The current application approval process implemented by the Board's existing AHP regulation may be briefly described as follows. The Banks receive AHP applications and first evaluate them for satisfaction of certain threshold requirements contained in the existing regulation. See 12 CFR 960.5(a)(1), (2). Those applications meeting the threshold requirements are evaluated by the Banks to determine if they meet at least three of the priorities contained in the existing regulation. If they do, they are scored by the Banks on the priorities and on other scoring objectives contained in the existing regulation before applications that meet fewer than three priorities. See *id.* § 960.5(a)(3), (b) through (e). Under the existing regulation, the Bank then forwards to the Board the highest scoring applications, and submits a summary of such applications. See *id.*

§ 960.5(f)(1), (2). The Board reviews the applications to ensure consistency with the threshold, priorities and scoring requirements, and makes final funding decisions on the applications. See *id.* § 960.5(f)(3).

While section 10(j) of the Act requires each Bank to establish an AHP, and vests in the Board broad authority to regulate the Banks' AHP activities through regulations implementing the Act, section 10(j) does not specifically assign the responsibility of operating the AHP to the Board. See 12 U.S.C. 1430(j). The Board does have other statutorily designated duties, including issuing regulations that specify activities eligible to receive subsidized advances under the AHP, ensuring advances are used to assist projects for which adequate long-term monitoring is available, ensuring that a preponderance of assistance provided under the AHP is ultimately received by low- and moderate-income households, and ensuring that AHP subsidies provided by Banks to members are passed on to the ultimate borrower. See *id.* Section 1430(j)(9) (A), (C), (D), (E). However, section 10(j) does not specify what entity is responsible for administering the AHP, and what entity is responsible for determining which AHP applications are approved for funding.

For the following reasons, the Board is proposing that the Banks assume the responsibility for determining which AHP applications are approved for funding. First, the Banks have had three and one-half years of experience with the AHP, which experience has included processing AHP applications, scoring the applications, and recommending applications for approval to the Board as described above. Consequently, the Banks are already processing and reviewing applications under the existing system.

Second, decentralization of the AHP is consistent with the Bank System's Strategic Plan, which calls for decentralization of a number of functions currently conducted by the Board, with the exception of those Board activities involving oversight and supervision of the Banks. See "System 2000: A Long-Term Strategic Plan For The Federal Home Loan Bank System."

The details of the proposed new application approval process are discussed further below.

The Board specifically requests comments as to whether the Banks should be given the authority to approve and disapprove AHP applications.

The proposed rule also revises the Board's existing AHP regulation by allowing each Bank to define more specifically its own priorities and scoring criteria, subject to certain overall priority and scoring parameters established in the proposed rule. The Bank would be required to include such proposed priorities and scoring criteria in its AHP implementation plan which must be approved by the Board. Under the Board's existing AHP regulation, the Banks have much less flexibility in defining priorities and scoring criteria. See 12 CFR 960.5 (a) through (e). In addition, under the proposed rule, certain point values for scoring categories would be revised.

The details of the proposed revisions for adopting priorities and scoring criteria are discussed further below under the scoring of AHP applications section.

*B. Bank Establishment of AHP and Adoption of AHP Implementation Plan*

Section 960.2(a) of the proposed rule generally reiterates the statement in § 960.2(a) of the Board's existing AHP regulation that it is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through providing subsidized advances and direct subsidies to members pursuant to the AHP. See 12 CFR 960.2(a).

Section 960.2(b) of the proposed rule provides that each Bank's board of directors shall establish an AHP, which shall be funded pursuant to the requirements of § 960.18 of the proposed rule. (See discussion below under the required annual AHP contributions section.) The Bank is required to make subsidized advances to applicants pursuant to its AHP and to operate its AHP in conformity with an annual AHP implementation plan and the requirements of this part. Direct subsidies provided by a Bank to applicants pursuant to its AHP also shall be provided in conformity with the Bank's AHP implementation plan and the requirements of this part. Each Bank's AHP implementation plan shall be approved by the Board before it is effective.

Section 960.2(b) of the proposed rule further provides that the AHP implementation plan must meet the requirements of this part, and shall include:

(1) The Bank's AHP funding cycle schedule, including application due dates, as required by proposed § 960.6(a)(1);

(2) The Bank's priorities, and scoring criteria for applications, as required by proposed §§ 960.8(a) and 960.10;

(3) The Bank's procedures to ensure satisfaction of the long-term requirement, as required by proposed § 960.5 (a)(1) and (b);

(4) The Bank's requirements for and verification procedures concerning (i) the use of subsidized advances or direct subsidies within a reasonable period of time after approval of an AHP application, as required by proposed § 960.12(a), or (ii) the use of loans or grants within a reasonable period of time after repayment of such funds to a loan fund or loan consortium, as required by proposed § 960.17(c)(5);

(5) The Bank's verification procedures upon initial disbursement of subsidized advances or direct subsidies, as required by proposed § 960.13;

(6) The Bank's monitoring plan, as required by proposed § 960.14(b);

(7) The Bank's reporting requirements for applicants during the construction or rehabilitation phase, as required by proposed § 960.15(b)(2);

(8) An explanation of circumstances justifying undue hardship waivers by the Bank of imposition of remedial actions, as required by proposed § 960.16 (c)(1) and (d)(1); and

(9) The Bank's determination regarding the number of persons that may serve on the Bank's Advisory Council and their terms, as required by proposed § 960.21(a)(1) and (4).

Section 960.2(c) of the proposed rule provides that the Bank's proposed AHP implementation plan shall be submitted to its Advisory Council at least 45 calendar days before it is considered by the Bank's board of directors. The Advisory Council shall review the proposed plan and submit its recommendations to the Bank's board of directors at least seven calendar days before the Bank's board of directors is scheduled to vote on the proposed plan. The Bank's board of directors shall vote on the proposed AHP implementation plan, and shall submit its approved plan to the Board for action. The Board shall approve or disapprove the proposed plan within 60 calendar days of receipt. The Bank's plan is not effective until it is approved by the Board, and it must become effective at least 45 calendar days before the due date for AHP applications established by the Bank. Each Bank must submit its AHP implementation plan to the Board for approval no later than 180 calendar days after the publication of this rule as a final rule in the **Federal Register**.

Section 960.2(d) of the proposed rule provides that the Bank's approved AHP implementation plan shall be made available by the Bank to the public upon request.

Section 960.2(e) of the proposed rule provides that the Board will approve or disapprove proposed amendments to a

Bank's approved AHP implementation plan submitted by the Bank within 60 calendar days of receipt.

*C. Authorized and Required Uses of AHP Subsidized Advances or Direct Subsidies*

Section 960.3 of the proposed rule states the general authorized uses of AHP subsidized advances and direct subsidies by applicants, § 960.4 provides specific examples of such authorized and unauthorized uses and other use requirements, and § 960.5 sets forth the long-term income-eligibility, affordability and income-targeting requirements for such uses. These proposed sections are discussed further below.

1. Authorized Uses of Subsidized Advances or Direct Subsidies

Section 960.3 of the proposed rule, consistent with § 960.3(b) (1) and (2) of the Board's existing AHP regulation, provides that applicants may use subsidized advances or direct subsidies received from a Bank under the AHP to either:

(a) Finance the purchase, construction or rehabilitation of owner-occupied housing units by or for low- or moderate-income households; or

(b) Finance the purchase, construction or rehabilitation of rental housing units, at least 20 percent of the units of which will be occupied by and affordable for very low-income households. See 12 CFR 960.3(b) (1) and (2).

2. Specific Use Requirements for Subsidized Advances or Direct Subsidies

Section 960.3(c) of the Board's existing AHP regulation provides that "Program funds may only be used for direct costs required to produce and/or finance affordable housing units." 12 CFR 960.3(c). A number of questions have arisen as to whether specific types of costs associated with the financing or production of housing may be considered "direct costs" for purposes of the Board's regulation. Because of the confusion in this area, the Board believes that it would be helpful to set forth in the rule examples of specific types of costs it considers to be authorized and unauthorized for AHP purposes. Accordingly, § 960.4(a) (1) and (2) of the proposed rule sets forth examples of specific costs related to the purchase, construction or rehabilitation of housing that are authorized and unauthorized uses of AHP subsidized advances or direct subsidies. However, because it is impossible to anticipate all types of costs that may arise in the course of financing or producing housing, the list of authorized and unauthorized costs in proposed § 960.4(a) is not exclusive. Other costs not included arguably may or may not qualify as costs of financing the purchase, construction or rehabilitation of housing. If an applicant seeks to use funds under the AHP to pay for costs not specifically included in this rule, it should consult with the Bank before submitting its application for approval. The Board specifically asks for comments as to whether these authorized and unauthorized costs are appropriate.

Specifically, § 960.4(a)(1) of the proposed rule provides that authorized uses of subsidized advances or direct subsidies include, but are not limited to, the following costs related to the purchase, construction or rehabilitation of housing:

(i) Real property purchase and improvement costs;

(ii) Construction or rehabilitation costs, including labor and materials, and contractor profit and overhead allowances;

(iii) Costs integral to the purchase or development of housing including, but not limited to, project-related: Architectural, inspection and engineering fees; local building permit and planning fees; accounting costs; survey costs; appraisal fees; title insurance and other insurance costs; performance bond and other bond fees; recording fees; credit report fees; property taxes; residential relocation costs where such costs are part of a relocation plan; legal fees; syndication fees; costs of translating resident documents to another language; loan commitment, loan origination and other loan financing fees for administrative costs other than costs of administering the AHP award; developer's fees; and marketing costs;

(iv) Prepayment fees imposed by the Bank on an applicant for a subsidized advance that is prepaid in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(v) Capitalization of reserve fund(s) necessary for the successful operation of rental housing projects, including replacement reserves, rent-up reserves, operating deficit reserves, and sinking fund reserves used for the transfer of the project to nonprofit ownership when associated with a low income housing tax credit transaction (26 U.S.C. 42);

(vi) Cancellation fees imposed by the Bank on an applicant for a subsidized advance commitment that is canceled and converted to and disbursed as a direct subsidy in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(vii) Refinancing of an existing loan in conjunction with the purchase, construction or rehabilitation of housing, provided the subsidized advance or direct subsidy and the proceeds of the refinancing are used only to retire existing debt and to benefit low- or moderate-income households and, in the case of refinancing in order to rehabilitate a project, there is a minimum of $2,500 per unit spent on such rehabilitation; and

(viii) Tenant services, tenant counseling and homeowner counseling costs that are a condition imposed by a lender to obtain financing from such lender and which are necessary for the successful operation of the project.

Cancellation fees identified in paragraph (vi) above, where there is purchase, construction or rehabilitation of housing and the borrower is required to pay the fee, are a cost of financing such purchase, construction or rehabilitation and therefore are authorized uses of funds under the AHP. Because the advance would be converted to a direct subsidy, such cancellation fees would be payable only if the application also meets the requirements for modification of applications contained in § 960.11 of the proposed rule. (These requirements are discussed in greater detail in the modification section below.) However, AHP subsidized advances or direct subsidies may not be used to pay for cancellation fees in situations where the cancellation of the advance is not part of a restructuring that results in the purchase, construction or rehabilitation of housing.

The conditions identified in paragraph (vii) above on the use of funds under the AHP for refinancing are intended to ensure that the funds are not used by the borrower to take out its equity in the project and to ensure that the funds are used for authorized purposes under the AHP. The Board specifically requests comments on whether the $2,500 minimum per unit is a reasonable minimum amount to be required to be spent on rehabilitation in conjunction with a refinancing.

Questions have arisen as to whether funds under the AHP should be used to pay for pre-development costs that may or may not result in the purchase, construction or rehabilitation of AHP housing. Pre-development costs are costs incurred prior to the closing of a purchase, construction or rehabilitation loan for the purpose of determining the feasibility of a proposed project.

Examples of pre-development costs include architectural and engineering fees, legal fees, the costs of surveys and appraisals, local building permit and planning fees, and earnest money deposits. Since AHP applications are required to meet the threshold feasibility requirement provided in proposed § 960.9(d) in order to be scored, authorizing the use of funds for pre-development costs raises the question how applications for such costs can or should be scored since the funds would be disbursed to applicants before the feasibility of a proposed project could be established.

In addition, there is a greater likelihood that costs incurred during the pre-feasibility period, rather than during the post-feasibility period, will not result in the purchase, construction or rehabilitation of housing. Thus, if applications for AHP funds to finance pre-development costs are approved, AHP funds in perhaps significant amounts could go towards pre-development costs that do not result in the financing or production of housing. If such costs are authorized, one option for dealing with this concern could be to cap the total amount of AHP funds that may be used for pre-development costs at a specific dollar amount or percentage, such as the lesser of $200,000 or 5 percent of the Bank's total AHP contributions for the year. These funds could be set aside and disbursed in a separate competitive process.

The Board specifically requests comments on whether funds under the AHP should be used for pre-development costs, how applications for such costs can or should be scored, and what limits, if any, should be placed on the amount of funds used for such purposes under the AHP.

3. Use of Funds Requirements

Section 960.4(b)(1)(i) of the proposed rule provides that the total amount of a direct subsidy provided by the Bank to an applicant under the AHP must be passed on by the applicant to the recipient. Consistent with § 960.9(c) of the Board's existing AHP regulation, § 960.4(b)(1)(ii) of the proposed rule provides that an applicant receiving a subsidized advance shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus an interest rate spread approved by the Bank. See 12 CFR 960.9(c). These provisions implement section 10(j)(9)(E) of the Act, which provides that the Board's AHP regulation shall ensure that AHP subsidies provided by Banks to applicants are passed on to the ultimate borrower. See 12 U.S.C. 1430(j)(9)(E).

Section 960.4(b)(2) of the proposed rule provides that if an applicant receives a subsidized advance or direct subsidy from a Bank or prepayment of a loan originally made under the AHP, any interest or other income earned by the applicant on such funds, not including any approved fee or interest rate spread charged to the borrower, must be forwarded to the Bank to be used for additional AHP projects, except for interest or other income earned by the applicant within 30 calendar days of receiving the subsidized advance or direct subsidy or of receiving prepayment of a loan originally made under the AHP.

Section 960.4(b)(3) of the proposed rule provides that a direct subsidy received by an applicant from a Bank that is provided by such applicant to a sponsor may be lent by the sponsor in connection with an AHP rental housing project involving low-income housing tax credits (LIHTC), provided the subsidy is lent by the sponsor for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such a loan is repaid before the end of the 30-year term, the entire amount of the direct subsidy must be repaid to the Bank.

For various tax reasons, sponsors prefer to structure LIHTC projects so that the AHP direct subsidy is lent to the project for a specific long-term period, with principal and interest payments deferred until the end of such term. The lending of a direct subsidy by a sponsor raises the question whether the subsidy is being passed on to the ultimate recipient, as required under section 10(j)(9)(E) of the Act and proposed § 960.4(b)(1)(i), since the subsidy ultimately is being repaid to the Bank. See 12 U.S.C. 1430(j)(9)(E). The Board believes that the lending of a direct subsidy for the long-term period of income eligibility and affordability required by § 960.5 of the proposed rule, with all principal and interest payments deferred until the end of such term, satisfies section 10(j)(9)(E) and proposed § 960.4(b)(1)(i), because the project will have had the use of such funds for the period the project must remain occupied by and affordable for low- or moderate-income households, even though the funds may be repaid at the end of such term. As discussed below, § 960.5(a)(1) of the proposed rule defines this long-term period generally as not less than 30 years for rental housing projects. Accordingly, the direct subsidy must be lent for a term of 30 years or more, with all principal and interest payments deferred until the end of such term.

Section 960.4(b)(4) of the proposed rule provides that if an applicant receives a subsidized advance or a direct subsidy from a Bank, and in turn provides both a loan and a grant to a borrower and charges an origination fee for providing the loan, then any fee charged by the applicant for providing the grant may not be paid with the AHP subsidized advance or direct subsidy. The fee may not be paid with the AHP subsidized advance because the applicant has already covered the underwriting costs for the loan and the grant in its origination fee for the loan. The fee may not be paid with the direct subsidy because otherwise the entire amount of the AHP subsidy would not be passed through to the borrower, as required by section 10(j)(9)(E) of the Act and proposed § 960.4(b)(1)(i). See 12 U.S.C. 1430(j)(9)(E).

4. Long-term Requirements

a. *Owner-occupied housing units.* (1) Long-term requirement. Section 10(j)(1) of the Act states that pursuant to regulations promulgated by the Board, each Bank shall establish a Program to subsidize the interest rate on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied housing at subsidized interest rates. *Id.* § 1430(j)(1). In addition, section 10(j)(2)(A) of the Act states that the Board's regulations shall permit Bank members to use subsidized advances received from the Banks to finance homeownership by families with incomes at or below 80 percent of the median income for the area. *Id.* § 1430(j)(2)(A).

The Act permits more than one possible interpretation of the requirement that owner-occupied housing must be "long-term." One way to interpret this requirement is that owner-occupied housing units assisted under the AHP must be added to and retained as part of the stock of affordable housing for a long-term period. Alternatively, the Act may be interpreted to require that under the AHP, assistance must be provided to low- or moderate-income households to make owner-occupied housing units affordable to such households for as long as they own the unit. These two possible interpretations are incorporated in options A and B described below. The Board specifically requests comments on these two options.

Option A. Under option A, the long-term requirement would be met by providing that owner-occupied housing units be required to be retained as affordable units for 30 years or, at the election of the sponsor, the remaining useful life of the units, regardless of

changes in occupancy. In order to enforce this retention requirement, owner-occupied units assisted with a loan or a grant under the AHP would have to be subject to a deed restriction or other legally enforceable mechanism restricting transfer of the unit to a low- or moderate-income household if the unit were sold within 30 years of the purchase, construction, or rehabilitation or prior to the end of the remaining useful life of the unit, as the case may be.

A household purchasing such a unit would have to qualify as a low- or moderate-income household only at the time of purchase or at the time of closing on the financing for the unit. A household rehabilitating a unit would have to qualify as a low- or moderate-income household only at the time the household received a commitment for funding through the AHP.

If an owner-occupied unit assisted by a loan under the AHP were sold prior to the end of the 30-year period or the remaining useful life of the unit, as the case may be, to a household that was not a low- or moderate-income household, then the applicant would have to either: (1) Repay to the Bank that portion of the advance used to make the loan to the seller, or (2) convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller would be made available by the Bank for additional AHP projects.

If an owner-occupied unit assisted by a grant under the AHP were sold prior to the end of the 30-year period or the remaining useful life of the unit, as the case may be, to a household that was not a low- or moderate-income household, then the seller would have to repay to the applicant a *pro rata* portion of the grant from any profit realized upon the sale of the unit, and any amount repaid to the applicant would have to be forwarded to the Bank and made available for additional AHP projects. The Bank would have the discretion to waive this recapture requirement if imposition of the requirement would cause undue hardship on the seller, as defined in the Bank's AHP implementation plan. In addition, for owner-occupied units assisted by a grant, the Bank would have to monitor the unit during the required long-term period by reviewing land title records or reports or certifications from the sponsor or a regulatory agency, as determined by each Bank in its AHP implementation plan, to determine whether the unit had been sold to a household whose income exceeded a low-or moderate-income.

As an alternative to requiring that each owner-occupied unit assisted by a grant be subject to a restriction on transfer, the Bank could have a legally binding agreement with the sponsor providing that if such unit were sold prior to the end of the required long-term period to a household that was not a low- or moderate-income household, the sponsor would make another unit available to a low- or moderate-income household.

Option B. Under option B, the long-term requirement would be met by providing that an owner-occupied unit assisted by a grant or a loan under the AHP must be affordable for the initial household for the duration of that household's occupancy of the unit. However, to minimize opportunities for speculation, the unit would have to be subject to a deed restriction or other legally enforceable mechanism restricting transfer of the unit to a low- or moderate-income household if the unit were sold within five years of the purchase, construction, or rehabilitation of the unit.

As under option A, a household purchasing such a unit under option B would have to qualify as a low- or moderate-income household only at the time of purchase or at the time of closing on the financing for the unit, and a household rehabilitating a unit would have to qualify as a low- or moderate-income household only at the time the household received a commitment for funding through the AHP.

If an owner-occupied unit assisted by a loan under the AHP were sold prior to the end of the five-year period to a household that was not a low- or moderate-income household, then the applicant would have to either: (1) Repay to the Bank that portion of the advance used to make the loan to the seller, or (2) convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller would be made available by the Bank for additional AHP projects.

If an owner-occupied unit assisted by a grant under the AHP were sold prior to the end of the five-year period to a household that was not a low- or moderate-income household, then the seller would have to repay to the applicant a *pro rata* portion of the grant from any profit realized upon the sale of the unit, and any amount repaid to the applicant would have to be forwarded to the Bank and made available for additional AHP projects. The Bank would have the discretion to waive this recapture requirement if imposition of the requirement would cause undue hardship on the seller, as defined in the Bank's AHP implementation plan. In addition, for owner-occupied units assisted by a grant, the Bank would have to monitor the unit during the required long-term period by reviewing land title records or reports or certifications from the sponsor or a regulatory agency, as determined by each Bank in its AHP implementation plan, to determine whether the unit had been sold to a household whose income exceeded a low or moderate income.

As under option A, as an alternative to requiring that each owner-occupied unit assisted by a grant be subject to a restriction on transfer, the Bank under option B could have a legally binding agreement with the sponsor providing that if such unit were sold prior to the end of the required long-term period to a household that was not a low- or moderate-income household, the sponsor would make another unit available to a low- or moderate-income household.

(2) Definitions of "low- or moderate-income household" and "very low-income household". Section 10(j)(13)(A) of the Act defines the term "low- or moderate-income household" as a household which has an income of 80 percent or less of the area median. 12 U.S.C. 1430(j)(13)(A). Section 10(j)(13)(B) of the Act defines the term "very low-income household" as a household that has an income of 50 percent or less of the area median. *Id.* section 1430(j)(13)(B). Thus, the term low- or moderate-income household incorporates households that meet the definition of very low-income household.

The Board's existing AHP regulation defines "low- and moderate-income households" as households for which the aggregate income is 80 percent or less of the area median income, and "very low-income households" as households for which the aggregate income is 50 percent or less of the area median income. See 12 CFR 960.1(g), (o). "Median income" is defined as "the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development." *Id.* § 960.1(h). "Area" is defined as "a metropolitan statistical area, a county, or a nonmetropolitan

area, as established by the U.S. Office of Management and Budget." *Id.* § 960.1(c).

(i) Adjustments of income limit. On November 5, 1993, the Board published a proposed rule to amend the definitions of these terms. See 58 FR 58988 (November 5, 1993). As discussed in the preamble to the proposed amendment, under section 3 of the United States Housing Act of 1937, the Secretary of the U.S. Department of Housing and Urban Development (Secretary) establishes income limits to be used in determining whether a family qualifies as a "low-income family" or as a "very low-income family" that is eligible to receive assistance under the Department of Housing and Urban Development's (HUD) housing programs. See 42 U.S.C. 1437a(b)(2). These income limits are calculated as a percentage of the median income of a four-person family living in a particular area. In general, the income limit for qualifying as a "low-income family" is set at 80 percent of the area median income, and the income limit for qualifying as a "very low-income family" is set at 50 percent of the area median income.

The Secretary may adjust the income limits for very low-income families and low-income families upward or downward to take into account unusually high or low family incomes in an area. See *id.* In addition, the income limit for low-income families may be adjusted to take into account prevailing levels of construction costs. See *id.* Then an adjustment in this figure is made to establish the comparable income limits for larger and smaller families living in the area. See *id.*

In 31 higher-income metropolitan statistical areas (MSAs) and 18 counties, the Secretary adjusts the area-based income limit for a four-person, low-income family downward if it would otherwise exceed the U.S. median income for a four-person family. In these areas, the Secretary caps the income limit for a four-person, low-income family at the U.S. median income for a four-person family.

In four MSAs and 107 counties, the Secretary adjusts the area-based income limit for four-person, very low- and low-income families downward because housing costs are low compared to incomes.

Adjusting the income limit downward decreases the number of households in an area that are eligible to receive assistance under HUD's housing programs.

As discussed in the proposed amendment, the Board believes that affordable housing financed through the AHP should be available to the greatest number of households possible, within the limits established by the Act. Further, households should not be excluded from affordable housing in a particular local market on the basis that housing costs are lower or household incomes are higher in that market than in other regions of the United States.

Applying the income limits that have been adjusted downward for prevailing construction costs, low housing costs, or unusually high household incomes for purposes of administering the AHP reduces the number of households eligible to live in affordable housing financed through the AHP. This limits a member's ability to use funds under the AHP to fulfill its obligation under the Community Reinvestment Act. See 12 U.S.C. 2901 *et seq.* It also limits a member's ability to use funds under the AHP to meet the "community investment or service" requirement of section 10(g) of the Act, 12 U.S.C. 1430(g), and the Board's Community Support Regulation, 12 CFR part 936.

Accordingly, the Board is proposing that in administering the AHP and in defining the standards governing the "community investment or service" requirement of the Act, the income limits used to determine whether a household in a particular area qualifies as a "very low-income household" or as a "low- or moderate-income household" should not be adjusted downward based on prevailing construction costs, low housing costs, or unusually high household incomes.

Therefore, as set forth in the Board's proposed amendment, § 960.1 of this proposed rule defines "low- or moderate-income household" as a household which has an income of 80 percent or less of the median income for the area, as adjusted and published by HUD, except in areas where the Secretary adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes. For areas where the Secretary makes this downward adjustment, "low- or moderate-income household" would be defined to mean a household which has an income of 80 percent or less of the median income for the area, as published by HUD, with adjustment for household size, but without the adjustments made by the Secretary for prevailing construction costs, low housing costs, or unusually high household incomes.

In addition, as set forth in the Board's proposed amendment, § 960.1 of this proposed rule defines "very low-income household" as a household which has an income of 50 percent or less of the median income for the area, as adjusted and published by HUD, except in areas where the Secretary adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes. For areas where the Secretary makes this downward adjustment, "very low-income household" would be defined to mean a household which has an income of 50 percent or less of the median income for the area, as published by HUD, with adjustment for household size, but without the adjustments made by the Secretary for prevailing construction costs, low housing costs, or unusually high household incomes.

While HUD publishes tables with adjusted income information that incorporates the adjustments for family size, prevailing construction costs, low housing costs, and unusually high family incomes, it does not publish tables with income information that adjusts only for family size and not these other factors. Therefore, as set forth in the Board's proposed amendment, § 960.1 of this proposed rule adds a definition of "adjustment for household size" in order to provide additional guidance in calculating this adjustment.

An adjustment for household size is made by taking a specified percentage of the income limit of a four-person household for a particular area, according to the following scale:

| No. persons | Percent adjustment |
|---|---|
| 1 | 70. |
| 2 | 80. |
| 3 | 90. |
| 4 | Base. |
| 5 | 108. |
| 6 | 116. |
| 7 | 124. |
| 8 | 132. |

For each person in excess of eight, eight percent of the four-person household base income limit should be added to the income limit for an eight-person household for the area. These adjustment factors are the same as those used by HUD in administering its housing programs.

Section 960.1 of the proposed rule retains the definition of "area" from the Board's existing AHP regulation. See 12 CFR 960.1(c). "Area" means, for purposes of defining "median income for the area," a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget. Consistent with the proposed amendment, § 960.1 of this proposed rule does not include a definition of "median income" because it is included in the proposed definitions of "very low-income

household" and "low- or moderate-income household."

(ii) Definition of "income". The Act is silent on how to define the term "income," *i.e.*, what are eligible sources of household income that should be considered in determining whether the household satisfies the definition of "low- or moderate-income household" or "very low-income household." The Board has determined not to define the term "income" in the proposed rule. Homeownership projects typically involve the participation of a lender which provides permanent financing for the homeowner over an extended period of time. The lender generally verifies a household's income prior to issuing a financing commitment during the underwriting of the loan. Eligible sources of income are identified by the lender during the mortgage underwriting process. Identifying eligible sources of income in the rule could cause inconsistency with lenders' customary and usual underwriting practices, or with the standards applied by the entity providing the major source of financing for the project.

b. *Rental housing units.* Section 960.5(a)(1) of the proposed rule provides generally that at least 20 percent of the rental housing units in a project financed under the AHP with subsidized advances or direct subsidies shall remain affordable for and occupied by very low-income households for a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units.

Proposed § 960.5(a)(1) implements section 10(j)(2)(B) of the Act, which provides that Bank members may use subsidized advances received from the Banks to finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term. 12 U.S.C. 1430(j)(2)(B).

Proposed § 960.5(a)(1) provides that the applicant and project sponsor shall state in the AHP application their commitment regarding satisfaction of the long-term income-eligibility, affordability and income-targeting requirements. In addition, an applicant may commit to maintain additional units as affordable for and occupied by low- or moderate-income households, which commitment shall be a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units.

(1) *Long-term requirement.* Section 10(j) of the Act does not define "remaining useful life" as used in section 10(j)(2)(B) of the Act. See 12 U.S.C. 1430(j). However, the legislative history of section 21A(c) of the Act regarding residential properties sold by the Resolution Trust Corporation (RTC), which was enacted as part of the same legislation that enacted section 10(j), states that the remaining useful life of such RTC property is intended to cover the property as long as it is habitable and assumes good faith efforts by the purchaser to maintain the property and to rehabilitate it as necessary. See Joint Explanatory Statement of the Committee of the Conference, H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess., 419 (1989) (FIRREA Conference Report); 12 U.S.C. 1441a(c). The RTC has in fact adopted a specific uniform period of useful life for all buildings instead of a period of useful life based on physical habitability. See 12 CFR 1609.2(kk). The legislative history of a recently enacted affordable housing statute, the Low Income Housing Preservation and Residential Homeownership Act (LIHPRHA), provides further support for a definition of "remaining useful life" based on the period of physical habitability of a property by explicitly rejecting the RTC's regulatory definition.

Accordingly, § 960.1 of the proposed rule defines "remaining useful life" as the period during which the housing remains in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced or repaired as becomes necessary.

Section 10(j) of the Act does not define "mortgage term" as used in section 10(j)(2)(B) of the Act. See 12 U.S.C. 1430(j). The legislative history of section 10(j) states that the conferees expect that the Board will encourage the use of the longest practicable mortgage term in order to aid in making the housing affordable for very low-income households. See FIRREA Conference Report at 431. Accordingly, the Board believes that "mortgage term" should be defined as the mortgage term only of long-term mortgage loans and believes that 30 years is consistent with Congress' intent in section 10(j)(2)(B) of the Act to ensure that AHP-assisted rental housing projects remain occupied by and affordable for income-eligible households for a long-term period.

(2) Definitions of "low- or moderate-income household" and "very low-income household". The definitions of "low- or moderate-income household" and "very low-income household" discussed above for AHP-assisted owner-occupied housing projects apply for AHP-assisted rental housing projects as well.

With respect to the definition of "income," rental housing projects typically have multiple providers of financing, each of which may specify the eligible sources of income, which sometimes conflict with each other. However, as with AHP-assisted owner-occupied housing projects, the Board has determined that the proposed rule should not specify the eligible sources of income for rental housing projects, but rather that applicants should be permitted to follow their usual underwriting guidelines, or may follow those of the predominant source of financing in the project.

(3) Increase in household income or sale of project before end of required long-term period. (i) *Increase in household income.* Section 960.5(a)(2) of the proposed rule provides that all households occupying a rental housing unit subject to the income-targeting requirement of paragraph (a)(1) of this section must satisfy the income-eligibility requirement applicable to such income-targeted unit, as committed to in the AHP application, upon initial occupancy. The household may continue to occupy the income-targeted unit even if its income increases above the income-eligibility requirement for such unit. The unit may continue to count toward meeting the income-targeting requirement committed to in the AHP application, provided the rent charged remains affordable to the household as defined in proposed § 960.1 (as further discussed below). However, if the household's income rises above 140 percent of the income-targeting level committed to in the AHP application, the sponsor must make the next available rental housing unit in the project affordable to and available for occupancy by a household whose income is at or below the income-targeting level committed to in the AHP application for the original unit. Once the next available rental housing unit is so occupied, the rent charged on the unit occupied by the household whose income has risen shall no longer be subject to the requirement that it be affordable for households at the income-targeting level committed to in the AHP application.

This approach is consistent with the approach followed in the LIHTC program. Under the LIHTC program, a unit is in compliance with the occupancy requirements until the tenant's income has risen to 140 percent of the qualifying income. See 26 U.S.C. § 42(g)(2)(D)(i). The next available unit must then be rented to an income-

eligible tenant at an affordable rent. See *id.* Section 42(g)(2)(D)(ii). This approach allows the household to achieve stability by allowing increases in income without fear of displacement or increased rents. In addition, it does not cause destabilization of the project's cash flow by having the project sponsor provide additional income-eligible units with reduced rents that may reduce the income of the project. It also would be consistent with the treatment of rents under the AHP's 20 percent requirement (also known as the maximum subsidy rule), which is currently an interim rule of the Board, and which is incorporated in § 960.9(c) of this proposed rule. (See discussion of 20 percent requirement below.)

Section 960.1 of the proposed rule defines "affordable for very low-income households" to mean:

(1) For purposes of rental housing units, that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household (assuming a household size of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom) which has an income of 50 percent of the median income for the area, as adjusted and published by HUD, except that in areas where the Secretary adjusts this income figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "affordable for very low-income households" means that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household which has an income of 50 percent of the median income for the area, as published by HUD, with adjustment for household size, but without the adjustments made by the Secretary for prevailing construction costs, low housing costs, or unusually high household incomes;

(2) If a rental unit is targeted to a household whose income is less than 50 percent of the median income for the area, then "affordable for very low-income households" means that the rent, including reasonable utility costs, charged to a household for such unit does not exceed 30 percent of the maximum qualifying income of the targeted households of the size expected to occupy the unit.

This proposed definition implements section 10(j)(13)(D) of the Act, which defines "affordable for very low-income households" to mean that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of HUD) with adjustment for family size. 12 U.S.C. 1430(j)(13)(D). Section 960.1(b) of the Board's existing AHP regulation contains a definition of the term that is similar to the statutory definition. See 12 CFR 960.1(b).

The Board has determined that an estimate for reasonable utility costs should be included in the determination of rents charged to households under this section, if they are not already included in the projected rents. Including utility costs would reduce the housing cost burden for very low-income households under the AHP, and would allow all rental projects to be treated equally, since some projects include the cost of utilities in the rent, while others do not include such costs in the rent. Including utility costs would be consistent with the treatment of rents in other federal housing programs, such as HUD's Section 8 program and the LIHTC program. It also would be consistent with the treatment of rents under the AHP's 20 percent requirement, which is currently an interim rule of the Board, and which is incorporated in § 960.9(c) of this proposed rule. (See discussion of 20 percent requirement below.)

The definition of "affordable for low- or moderate-income households" in § 960.1 of the proposed rule is similar to the above definition, except that the household must have an income of 80 percent, instead of 50 percent, of the median income for the area, since the Act defines a "low- or moderate-income household" as any household which has an income of 80 percent or less of the area median. 12 U.S.C. 1430(j)(13)(A).

(ii) *Sale of AHP-assisted rental housing project.* Section 960.5(a)(3) of the proposed rule provides that an owner of an AHP-assisted rental housing project may sell the project prior to the end of the long-term period during which the project's rental units, or applicable portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application; however, either:

a. The purchaser must agree to continue the project's rental units, or applicable portion thereof, as affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and must agree to be subject to the same restrictions on resale that applied to the seller; or

b. If the purchaser does not satisfy the requirements in paragraph a. above, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay a *pro rata* portion of the grant as provided in § 960.16(d)(1); or

c. If the purchaser does not satisfy the requirements in paragraph a. above, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

Proposed § 960.5(b) further provides that the Bank's AHP implementation plan shall permit the owner of an AHP-assisted rental housing project to sell such project as provided for in paragraph (a)(3).

D. Establishment of AHP Funding Cycles and Available AHP Subsidies

Section 960.6(a)(1) of the proposed rule requires each Bank to establish at least two but no more than four AHP funding cycles per year during which applications for AHP subsidized advances or direct subsidies will be accepted. This is a change from the Board's existing AHP regulation, which provides that the Banks may accept AHP applications during two of four quarterly periods each year. See 12 CFR 960.4(a).

Section 960.6(a)(1) of the proposed rule also provides that the AHP funding cycle schedule, including application due dates, is to be determined by the Bank in its discretion, but shall allow for sufficient time intervals to ensure an adequate pool of applicants to compete in each funding cycle. The funding cycles schedule, including application due dates, shall be described in detail in the Bank's AHP implementation plan. This is also a change from the Board's existing AHP regulation, which sets forth specific application due dates. See 12 CFR 960.4(a).

Section 960.6(a)(2) of the proposed rule provides that each Bank shall inform the general public and its members of the number and dates of its AHP funding cycles for the year and the approximate amount of available AHP subsidies for each funding cycle at least 45 calendar days before the due date for AHP applications for the first funding cycle for the year. This is a change from the Board's existing AHP regulation, which requires each Bank to announce its funding cycles by December 1 of the preceding year, and to notify only its members of the approximate amount of AHP subsidies to be offered in each funding cycle. See 12 CFR 960.4(a), (b).

Consistent with § 960.4(b) of the Board's existing AHP regulation, § 960.6(b) of the proposed rule provides that each Bank shall allocate comparable amounts of AHP subsidies

for each AHP funding cycle during the year. See 12 CFR 960.4(b).

*E. Specific Application and Scoring Requirements*

1. Application Requirements

The proposed rule does not mandate use of a uniform AHP application form by all of the Banks. Rather, the Board believes that, consistent with current practice under the AHP, each Bank should continue to devise its own AHP application form, because each Bank will have its own special information requirements as a result of the specific priorities and scoring criteria adopted by the Bank.

However, as discussed further below, all AHP applications must satisfy certain threshold requirements in order to be considered for scoring under the proposed rule. Thus, certain information from applicants must be received by all Banks in order for the Banks to be able to determine whether the applications satisfy the threshold requirements in the proposed rule and to score the applications under the scoring criteria. Accordingly, § 960.7(a) of the proposed rule provides that each Bank shall require applicants for subsidized advances or direct subsidies under the AHP to submit to the Bank an application which, at a minimum, contains all of the information described below and any other information which the Bank determines is necessary in order to take action on such application, including the following:

(1) A concise description of the purpose of the request and proposed uses of the funds, and its relationship to the priorities identified in proposed § 960.10(d), the targeting criterion identified in proposed § 960.10(e), and the other objectives identified in proposed § 960.10(f);

(2) A statement of how the project will satisfy the authorized uses and long-term requirements, including a description of legal mechanisms to be used to ensure compliance by the project with such requirements, contained in proposed §§ 960.3 and 960.5;

(3) A statement of how the project will comply with the fair housing law requirement contained in proposed § 960.9(b);

(4) A statement of how the project will satisfy the feasibility requirement contained in proposed § 960.9(d);

(5) A statement of how the project's sponsor satisfies the qualification requirement contained in proposed § 960.9(e);

(6) A statement of whether a subsidized advance or direct subsidy has been requested and the amount of such funds requested;

(7) A disclosure of whether or not the applicant has a direct or indirect interest in the property or project. If the applicant has an interest in the property and the application is approved, then prior to the transfer of AHP funds to the project, an independent current appraisal of the fair market value of such property must be provided, unless the applicant demonstrates that the property is being sold or otherwise transferred to the sponsor at a price substantially below the fair market value;

(8) A statement of the project's costs; and

(9) A certification from the applicant's, the sponsor's and the loan fund's or loan consortium's board of directors, or president or senior officer if so delegated by the board of directors, that the applicant, the sponsor and the loan fund or loan consortium will comply with all requirements of this part and all obligations committed to in the AHP application.

Section 960.4(c) of the Board's existing AHP regulation also generally requires an applicant to include in its AHP application the information identified in paragraphs (3) through (6) above, as well as any other information the Bank may require. See 12 CFR 960.4(c).

Section 960.4(c)(6) of the Board's existing AHP regulation also requires an applicant to disclose in its AHP application any direct or indirect interest of the applicant in the property or project. See 12 CFR 960.4(c)(6). Under § 960.7(a)(7) of the proposed rule, if such an interest exists and the application is approved, then prior to the transfer of AHP funds to the project, the applicant generally is required to provide an appraisal of the property or project. This is to ensure that the sales price of such property or project owned by the applicant has not been inflated and that the applicant is not receiving the benefit of the AHP subsidy.

Section 960.4(c)(7) of the Board's existing AHP regulation requires the applicant to include in its AHP application an explanation of how the applicant intends to monitor the use of any funds received under the AHP, including an explanation of how the structure of the project ensures that a preponderance of the subsidy is ultimately received by the targeted beneficiaries. See 12 U.S.C. 1430(j)(9)(D); 12 CFR 960.4(c)(7). As discussed in greater detail in the monitoring section below, as long as adequate monitoring is otherwise provided for, the proposed rule does not require the applicant in all instances to monitor the AHP-assisted project for compliance with the long-term requirement of the proposed rule. Accordingly, this provision of the existing regulation is deleted in the proposed rule.

Section 960.4(c)(8) of the Board's existing AHP regulation requires the applicant to certify that the maximum subsidy limitation requirements of the AHP rule will not be violated. See 12 CFR 960.4(c)(8). However, since the maximum subsidy limitation requirements are threshold requirements that all AHP applications must satisfy (see discussion below of the 20 percent requirement), this requirement is incorporated into proposed § 960.7(a)(9), which provides generally that the applicant and sponsor must certify that all requirements of the AHP regulation will be satisfied.

Section 960.4(c)(8) of the Board's existing AHP regulation also requires the applicant to explain in its AHP application how any AHP subsidy that exceeds the maximum subsidy requirements will be recaptured. See 12 CFR 960.4(c)(8). Since AHP applications must satisfy the threshold maximum subsidy limitation requirements at the outset in order to be scored and approved for AHP funding, this issue does not arise and therefore has been deleted in the proposed rule.

As discussed above, the requirement in § 960.4(c)(9) of the Board's existing AHP regulation that the applicant's managing officer must certify that the AHP subsidy shall be only for authorized uses is expanded in proposed § 960.7(a)(9) to require a certification by the applicant, the sponsor and the loan fund or loan consortium not only that funds received under the AHP will be used for authorized uses, but also a certification of compliance with all requirements of the AHP regulation and all obligations committed to in the AHP application. See 12 CFR 960.4(c)(9). In addition, the proposed rule requires the applicant, the sponsor and the loan fund or loan consortium, not just the applicant, as in the Board's existing AHP regulation, to make the certification in the AHP application. This change is proposed because the applicant, the sponsor and the loan fund or loan consortium are all subject to specific requirements under the AHP and therefore should be required to certify that they will comply with such requirements.

2. Action on Applications

As discussed above, the proposed rule makes a major change in the Board's existing AHP regulation by taking the

Board out of the approval process for AHP applications. Section 960.7(b)(1) of the proposed rule provides that each Bank shall review, score and take action on an AHP application pursuant to the requirements contained in proposed §§ 960.8, 960.9 and 960.10, and shall notify the applicant of such action no later than 60 calendar days after the application due date for the AHP funding cycle. Section 960.5(f)(1) of the existing regulation requires the Banks to forward to the Board their recommended applications no later than 30 days after each offering deadline. See 12 CFR 960.5(f)(1). Since the Banks would have greater responsibilities in the approval process under the proposed rule, the 30-day period is proposed to be extended to 60 calendar days.

Section 960.7(b)(2) of the proposed rule provides specifically that the board of directors of each Bank shall have the authority to approve or disapprove AHP applications received, and may delegate such authority to the president or other senior officers of the Bank.

Section 960.7(b)(3) of the proposed rule provides that within 30 calendar days of each Bank's approval of the AHP applications for a given AHP funding cycle, the Bank shall forward to the Board a summary of each approved AHP application. The summary shall:

(i) Briefly describe the project, including the applicant, the loan fund or loan consortium, if applicable, and the sponsor—whether nonprofit, for-profit or public agency, the type of housing, the location, the long-term period committed to, the number of housing units including the number of units affordable for very low-, low- or moderate-income households or for households at any other income levels committed to in the AHP application, the development cost, other financing sources, and special needs populations served;

(ii) State the reason for the points awarded under each of the Bank's scoring criteria for the project;

(iii) Indicate whether a subsidized advance or direct subsidy was approved by the Bank for the project, the use of such funds, and the amount of such funds approved; if a subsidized advance was approved, the summary shall indicate the amount of the advance, the advance rate, the amortization schedule for the advance, the term to maturity, the applicable cost of funds, and the date as of which the cost of funds was determined;

(iv) Indicate whether the project received approval in a prior AHP funding cycle, or whether the project is an extension, expansion, continuation or reconfiguration of a previously approved AHP project;

(v) Describe how the project will be monitored and by what entity;

(vi) Describe the legal mechanisms to be used to ensure compliance by the project with the long-term requirement contained in § 960.5 of the proposed rule;

(vii) Include a summary in chart form showing all AHP applications received by the Bank in the particular AHP funding cycle, with the score each application received for each scoring criterion, and the total score received by each project; and

(viii) Include any other information required by the Board.

The Board has general oversight responsibility over the AHP under section 10(j) of the Act. See 12 U.S.C. 1430(j). In addition, section 10(j)(12)(A) of the Act requires the Board to monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by the Banks and the utilization of advances for these purposes. *Id.* § 1430(j)(12)(A). Since the Board would no longer be receiving and approving AHP applications under the proposed rule, the Board would no longer have these applications as a source of data to assist the Board in exercising its oversight and monitoring responsibilities and preparing the annual report to the Congress and the Advisory Councils. Accordingly, the Board will need the Banks to provide this additional information to the Board in the summary, as required in proposed § 960.7(b)(3).

*F. Requirements For Approval of AHP Applications*

1. General

Section 960.8(a) of the proposed rule provides that each Bank shall evaluate the AHP applications received to determine if they satisfy the threshold criteria in proposed § 960.9. All applications that meet the threshold criteria shall be scored pursuant to the criteria contained in proposed § 960.10 as set forth in the Bank's approved AHP implementation plan.

Section 960.8(b) of the proposed rule provides that the Bank shall approve the applications in descending order starting with the highest scoring application until the total AHP funding amount for the particular funding cycle, except for any amount insufficient to fund the next highest scoring project, has been allocated. The Bank also may approve the next four highest scoring applications as alternates and, within one year of approval by the Bank, may fund such alternates if any previously committed AHP funds become available.

2. Threshold Criteria for Approval of AHP Applications

Section 960.9 of the proposed rule provides that an AHP application must meet all of the threshold criteria set forth in a. through f. below in order to be considered for scoring under proposed § 960.10 and for AHP funding approval. These criteria are discussed in detail below.

a. *Authorized and required uses requirements.* The AHP application must indicate that the use of the subsidized advance or direct subsidy set forth in the AHP application for the proposed project will comply with the requirements for authorized and required uses of such funds contained in proposed §§ 960.3, 960.4 and 960.5. See proposed § 960.9(a).

This proposed provision is consistent with the intent of § 960.5(a)(1) of the Board's existing AHP regulation. See 12 CFR 960.5(a)(1).

b. *Fair housing law requirements.* The AHP application must indicate that the project sponsor will comply with any applicable fair housing law requirements and must indicate how the sponsor proposes to affirmatively further compliance with such requirements. See proposed § 960.9(b).

This proposed provision is consistent with the requirement of compliance with fair housing laws contained in § 960.5(a)(2)(i) of the Board's existing AHP regulation, and the requirement under existing practice that applications indicate how the sponsor proposes to affirmatively further such compliance. See 12 CFR 960.5(a)(2)(i).

c. *The twenty percent requirement and alternatives.* Section 960.9(c) of the proposed rule incorporates the existing maximum subsidy limitation requirement and alternatives contained in § 960.9 of the Board's interim rule, with minor changes in language and one substantive modification discussed below. See 12 CFR 960.9 (58 FR 17968 (April 7, 1993)). The 20 percent requirement and the alternatives discussed below implement the maximum subsidy limitation requirement contained in section 10(j)(9)(F) of the Act. See 12 U.S.C. 1430(j)(9)(F). Since the 20 percent requirement or an alternative must be satisfied by all AHP applications to avoid over-subsidization of a project, it is set forth as a threshold requirement in the proposed rule.

(i) The twenty percent requirement. Section 960.9(c)(1)(i) of the proposed rule provides generally that a Bank shall

not offer subsidized advances or direct subsidies to applicants in excess of that amount needed to reduce the monthly housing costs for income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income (the 20 percent requirement). In projects where other forms of federal, state, local or private subsidized assistance are being used in conjunction with AHP subsidized advances or direct subsidies, the total amount of subsidized assistance, including funds provided under the AHP, shall not be in excess of the amount needed to reduce the monthly housing costs for the income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income.

Monthly housing costs are defined in proposed § 960.9(c)(1)(ii) as:

(1) For households in AHP-assisted owner-occupied housing units, mortgage principal and interest payments, real property taxes, homeowners' insurance, a reasonable estimate of utility costs excluding telephone service, and for households in AHP-assisted condominium, cooperative, mutual housing or other housing projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit; and

(2) For households in AHP-assisted rental housing units, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service.

Section 960.9(c)(1)(iii) of the proposed rule provides that a household subject to the 20 percent requirement is required to meet such requirement only at the time it initially purchases or occupies a unit.

(ii) Alternative requirements. Section 960.9(c)(2)(i) of the proposed rule provides that the 20 percent requirement shall not apply where a Bank provides subsidized advances or direct subsidies to an applicant for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the household meets the housing payment requirements of the other program.

Section 960.9(c)(2)(ii)(A) of the proposed rule provides that the 20 percent requirement shall not apply where the total amount of AHP funds provided through a Bank subsidized advance or direct subsidy used to finance rehabilitation of a housing unit by a very low-income household that already owns and occupies the housing unit is $10,000 or less per such household. In addition, proposed § 960.9(c)(2)(ii)(B) provides that the 20 percent requirement shall not apply where the total amount of AHP funds provided through a Bank subsidized advance or direct subsidy used to finance the purchase of a housing unit by a very low-income household is $5,000 or less per such household. This is a change from the interim rule which permits this alternative to the 20 percent requirement only for households that are above the threshold income level for very low-income households and at or below the income level to qualify as low- or moderate-income households. The Board did not intend to exclude very low-income households from taking advantage of this alternative when it adopted the interim rule. Accordingly, proposed § 960.9(c)(2)(ii)(B) corrects this error.

Section 960.9(c)(2)(iii) of the proposed rule provides that the 20 percent requirement shall not apply where the total amount of AHP funds provided through a Bank subsidized advance or direct subsidy used to finance rehabilitation or purchase of a housing unit by a low- or moderate-income household is $5,000 or less per such household.

Section 960.9(c)(2)(iv) of the proposed rule provides that the 20 percent requirement shall not apply where a Bank provides subsidized advances or direct subsidies ultimately benefiting a household with an income at or below the level committed to in the AHP application, which is participating in a self-help, sweat equity or similar housing program. Under the proposed rule, the household is required to contribute its skilled or unskilled labor valued at a minimum of $2,000 per household. The household must work cooperatively with others to construct or rehabilitate housing which the household or other program participants are purchasing or already own and occupy, and the program must involve supervision of the work performed by skilled builders or rehabilitators.

d. *Project feasibility.* The AHP application must indicate that the proposed project is feasible. This determination must be based on an analysis of project sources and uses of funds, project multi-year operating pro formas for rental housing projects, projections of sales and prices for owner-occupied housing units, and local market conditions. The analysis must show that the project is financially viable and likely to be completed within a reasonable period of time, and is likely to operate or sell and remain affordable to the designated income-eligible households over the long-term period committed to in the AHP application. See proposed § 960.9(d).

A feasibility requirement also is contained in § 960.5(a)(2)(ii) of the Board's existing AHP regulation. See 12 CFR 960.5(a)(2)(ii).

e. *Qualifications of sponsor.* The AHP application must indicate that the sponsor has the qualifications and ability to perform its responsibilities as committed to in the AHP application. See proposed § 960.9(e).

This proposed provision is not included as a threshold requirement in the Board's existing AHP regulation, although it is required under the regulation to be included by an applicant in its AHP application. See 12 CFR 960.4(c)(4). The Board believes that this provision should be included as a threshold requirement, since a project should not be funded if the sponsor lacks the qualifications and ability to undertake the project.

f. *Creditworthiness of applicant.* Consistent with the Board's existing AHP regulation, § 960.9(f) of the proposed rule provides that the applicant must have the ability to qualify for an advance from the Bank to fund the project described in the AHP application. See 12 CFR 960.5(a)(2)(iii).

The Board's existing AHP regulation also includes as a threshold requirement the ability of the project to begin using Bank assistance within 12 months. See 12 CFR 960.5(a)(2)(iv). Since this involves the use of funds after a project has been approved for funding, it does not belong as a threshold requirement and has been omitted in this section of the proposed rule. The requirements under the proposed rule for use of funds under the AHP within a reasonable period of time after approval of the application are discussed below in the use and verification section.

Finally, it has been suggested that a threshold criterion should be added requiring that the project costs set forth in the AHP application are reasonable and appropriate for the type and location of the housing.

Section 10(j)(9)(F) of the Act requires the Board to establish maximum subsidy limitations under the AHP. 12 U.S.C. 1430(j)(9)(F). Section 10(j)(9)(D) of the Act also requires the Board to ensure that a preponderance of assistance provided under the AHP is ultimately received by low- and moderate-income households. *Id.*

Section 1430(j)(9)(D). Requiring that project costs be reasonable is one way of controlling the amount of AHP subsidies that fund a project in order to keep the project from being over-subsidized, and to ensure that a preponderance of the funds are being received by the ultimate households by lowering their housing costs and not providing undue benefit to the intermediaries in the development process.

A project costs requirement is not explicitly prescribed in the threshold requirements under the Board's existing AHP regulation, although some Banks do currently review project costs to determine if they are reasonable under the feasibility requirement in the existing regulation. See 12 CFR 960.5(a)(2)(ii). The feasibility requirement as defined in the proposed rule would not incorporate a project costs limit requirement.

The Board specifically requests comments on how the Banks currently deal with applications with excessive project costs, whether the project costs option discussed above should be required as a threshold criterion in approving AHP applications, and how such a requirement could be implemented by the Banks.

3. Scoring of AHP Applications

Section 960.10(a) of the proposed rule provides that the Bank shall score AHP applications that satisfy all of the threshold criteria in proposed § 960.9 according to the scoring methodology set forth in proposed § 960.10, which shall be included in the Bank's approved AHP implementation plan. Section 960.10 of the proposed rule modifies the existing scoring methodology, and the Board specifically requests comments on this proposed new scoring methodology.

a. *Priority treatment and scoring.* Section 960.10(b) of the proposed rule provides that each application is first evaluated to determine if it will receive priority treatment. The Board's existing AHP regulation contains seven priorities: Homeownership projects; rental projects; projects using government properties; projects with a non-profit or public agency sponsor; projects promoting empowerment; homeless housing projects; and projects meeting a Bank priority. Under the existing AHP regulation, an application must meet at least three of the seven priorities to receive priority treatment. The proposed rule would contain only five priorities. The proposed rule would eliminate the priorities for homeownership and rental properties because a project must be either a rental or homeownership project in order to qualify for AHP funding. The proposed rule would replace the empowerment and homeless housing priorities with a priority for "special needs" housing. In addition, the proposed rule would add a new priority for projects promoting economic mobility.

Under § 960.10(b) of the proposed rule, for purposes of determining priority, an application can receive a maximum of eight points for each of the five priority categories described below. A Bank in its AHP implementation plan shall define more specifically each of the five priority categories and explain specifically how points will be awarded for satisfying each category. An application will be deemed to meet a particular priority category if it is awarded at least four points for that priority category. Applications meeting at least two priority categories shall receive priority treatment.

Section 960.10(c) of the proposed rule provides that applications that qualify for such priority treatment shall be scored before applications that do not qualify for priority treatment. The applications that do not qualify for priority treatment will not be scored unless there are insufficient priority treatment applications to utilize the total AHP funding amount for the funding cycle. Under the proposed rule, the total points available for the priorities would be increased from 25 to 40. Section 960.10(d) of the proposed rule provides that the Bank shall total the points received by each applicant for purposes of determining priority for all of the five priority categories and shall award 40 points to the application(s) that receive the highest number of total points, and the remaining application scores shall be adjusted and awarded points on a declining scale basis.

The five priority categories are set forth below.

(1) Government-owned properties. Applications for projects that finance the purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, including but not limited to HUD, the RTC, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation. (See proposed § 960.10(d)(1).)

(2) *Nonprofit or state or local government sponsored projects.* Applications for projects that finance the purchase, construction or rehabilitation of housing sponsored by a nonprofit organization, a state or political subdivision of a state, a local housing authority or a state housing finance agency. (See proposed § 960.10(d)(2).)

(3) *Special needs projects.* Applications for projects that address special needs, which shall be defined by the Bank in its AHP implementation plan, which special needs may include but are not limited to:

(i) Empowering the households or residents through programs such as resident management of the property, self-help housing, homesteading, and sweat equity;

(ii) Providing housing for special needs populations such as homeless persons, abused or battered persons, persons with AIDS, mentally or physically disabled persons, or persons with substance abuse problems;

(iii) Providing housing in rural areas or areas targeted by local, state or federal governments for community development or revitalization through the development of affordable housing or economic investment; or

(iv) Providing housing with special services to meet the needs of low- or moderate-income households including, but not limited to, child care, job training, medical care, substance abuse programs, independent living skill training, and rental household and homeowner household counseling. (See proposed § 960.10(d)(3).)

In defining the special needs priority in its AHP implementation plan, a Bank is not required to include all of the special needs listed as examples above. Rather, a Bank may be selective in giving priority to some special needs and not others in devising its scoring system. In addition, the Bank may select other special needs not listed as examples above if the special needs chosen are similar in nature to such examples.

(4) District Bank priority. Applications for projects that meet one or more priorities recommended by the Bank's Advisory Council and adopted by the Bank's board of directors that each address a housing need in the Bank's district and are consistent with the purposes of this part. The Bank shall describe in its AHP implementation plan how the points for the priority or priorities will be distributed. (See proposed § 960.10(d)(4).)

(5) Economic mobility priority. Applications for projects that provide housing for low- or moderate-income households that move from low- or moderate-income neighborhoods or housing projects to neighborhoods, mixed-income buildings or owner-occupied housing developments in which at least 50 percent of the

households have incomes above the median income for the area, as published by the U.S. Department of Housing and Urban Development. (See proposed § 960.10(d)(5).)

b. *Scoring for objectives.* The Board's existing AHP regulation contains the following "objectives" scoring criteria: Targeting; long-term retention; effectiveness; community involvement; community stability; and innovation. The proposed rule makes long-term retention a threshold criteria and adds a new objective called "applicant participation." A description of this new objective and the other criteria are set forth below.

c. *Scoring for targeting objective.* Section 960.10(e) of the proposed rule provides that an application can receive a maximum of 20 points for the targeting objective category. This is an increase from 15 points under the existing regulation. The proposed rule provides that the Bank shall award points to applications based on the extent to which the project(s) serve(s) the greatest percentage of very low-, low- and moderate-income households, in that priority order. In the alternative, if a weighted-average scoring methodology is provided in the Bank's AHP implementation plan, the Bank shall award points to an application based on the extent to which the project has the lowest weighted-average income determined by multiplying the percentage of units reserved for households at certain income levels by those incomes expressed as a percentage of median income, and adding the totals. Applications shall be scored relative to each other with the maximum number of points allowable awarded to the application(s) that best achieve(s) the targeting objective, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. However, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group.

d. *Scoring for other objectives.* Section 960.10(f) of the proposed rule sets forth five other objectives categories for scoring AHP applications. The proposed rule requires the Bank in its AHP implementation plan to define more specifically each of the five other objectives categories and explain specifically how points will be awarded for satisfying each category. For each category, the Bank shall award the maximum number of points allowable for such category to the application(s) that best achieve(s) the objective, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. The five other objectives categories are set forth below.

(1) AHP subsidy per unit. An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-subsidized unit. Projects should be scored relative to each other; however, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group. This scoring criterion may not include a leveraging criterion whereby the application is scored based on the percentage of the project's total development cost that is to be financed with the AHP subsidy. This replaces the effectiveness criterion that can receive a maximum of 15 points in the existing scoring methodology.

(2) Applicant participation. An application can receive a maximum of five points for this category. The Bank shall award points to applications based on the extent to which the project involves participation by applicants other than the receipt of a subsidized advance or direct subsidy under the AHP. Such participation can be financial or non-financial, including but not limited to debt or equity financing of the project, grants to the project, applicant involvement on the boards of nonprofit sponsors, and applicant provision of technical assistance to the nonprofit sponsors for the project. This is a new scoring criterion.

(3) Community involvement. An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which there is demonstrated support for the project by local community organizations and individuals other than as project sponsors, such as through the commitment by such organizations and individuals of funds, goods and services, and volunteer labor. The Banks should not award points for this category based solely on the number of letters of support received for the project.

(4) Community stability. An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project(s) maximize(s) community stability, such as by: committing to maintain a greater long-term period pursuant to § 960.5; revitalizing vacant or abandoned properties or being integrally part of a neighborhood stabilization plan, if such revitalization or stabilization is not identified as a special needs category by the Bank pursuant to § 960.10(d)(3)(iii); and not displacing low- or moderate-income households, or if such displacement will occur, indicating how such households will be assisted to minimize the impact of such displacement.

(5) Innovation. An application can receive a maximum of five points for this category. This is a reduction from 10 points under the existing regulation. The Bank shall award points to applications based on the extent to which the project(s) involve(s) a particularly new or unusual approach, either financial or non-financial, for meeting the requirements of this part.

*G. Modifications of Approved AHP Applications*

Section 960.11(a) of the proposed rule provides that an applicant that seeks a modification of an approved AHP application before completion and occupancy of the project must submit a request for such modification in writing to the Bank for review and approval. A modification is any change that affects or could potentially affect the material facts under which the application was originally evaluated and scored. Modifications are changes in the specifics of an application such as requests for additional AHP subsidy or changes in approved income targeting.

Section 960.11(b) of the proposed rule provides that a request for a modification of an approved AHP application must include, at a minimum:

1. A description of how the proposed modification differs from the original application;

2. The reason for the proposed modification; and

3. Any other information that the Bank determines is necessary to review the proposed modification.

Section 960.11(c)(1) of the proposed rule provides that the Bank shall review the request for modification, shall re-score the application as proposed to be modified according to the scoring criteria used in the AHP funding cycle in which the application was originally approved, and may approve such request if the following factors are satisfied:

1. The project as proposed to be modified continues to meet all of the requirements of this part; and

2. The project as proposed to be modified continues to score high enough that it would have been approved in its AHP funding cycle.

Section 960.11(c)(2) of the proposed rule provides that if the application does not satisfy the requirements in paragraph (c)(1), the Bank in its

discretion may approve the request for modification if the reason for the modification is due to circumstances outside the control of the applicant or sponsor.

Section 960.11(d) of the proposed rule provides that the Bank shall forward to the Board a detailed summary of any modification of an AHP application approved by the Bank, including how the Bank re-scored the project, within 30 calendar days of the approval of such modification.

*H. Use, Calculation and Verification at Initial Disbursement of AHP Subsidized Advances or Direct Subsidies*

1. Use of Subsidized Advances or Direct Subsidies Within Reasonable Period of Time and Verification of Reasonable Progress

As discussed above, the threshold requirement in the Board's existing AHP regulation that the project have the ability to begin using Bank assistance within 12 months is omitted as a threshold requirement in the proposed rule. See 12 CFR 960.5(a)(2)(iv). In addition, setting a fixed period of 12 months may not be appropriate in all cases, because what is a reasonable period of time will vary from project to project depending on the type of project and the circumstances of the project. However, the Board does believe that funds received under the AHP should be used within a reasonable period of time after approval of an AHP application. Because what is a reasonable period of time is so project specific, the Board believes that the determination of such periods should be left to the discretion of the Banks.

Accordingly, § 960.12(a) of the proposed rule provides that the Bank shall in its AHP implementation plan identify what constitutes reasonable progress by the sponsor towards using subsidized advances or direct subsidies within a reasonable period of time after the approval of an AHP application for different types of projects, and explain how it intends to verify such reasonable progress.

Section 960.12(b) of the proposed rule provides that the sponsor must demonstrate that reasonable progress is being made towards using the requested funds within a reasonable period of time after approval of the AHP application, as determined by the Bank.

Section 960.12(c) of the proposed rule provides that the Bank shall verify the efforts of the sponsor to determine whether it has satisfied the requirement in paragraph (b).

Section 960.12(d) of the proposed rule provides that if the sponsor fails to satisfy the requirement in paragraph (b), the Bank shall cancel the AHP award, and shall not disburse any subsidized advances or direct subsidies through the applicant to the sponsor, and the full amount of any previously disbursed subsidized advances or direct subsidies shall be returned to the Bank.

2. Calculation of AHP Subsidy

The Board is considering adopting rules on the calculation of AHP subsidies for subsidized advances and specifically requests comments on the following proposals. Under consideration is whether AHP application approvals should commit to provide a dollar amount of subsidy, or should commit to make a subsidized advance at a specific interest rate. Another possibility is that the Bank can select on a case-by-case basis to do one or the other or both but the choice must be specified in its approval. The rule could require the Bank's AHP implementation plan to describe the Bank's procedures in this area.

The Board specifically requests comments as to whether an AHP approval should commit to provide a specific dollar amount of subsidy for a subsidized advance. If interest rates rise after the approval, should the interest rate on the subsidized advance be increased so that the present value of the amount needed to subsidize the reduction in interest rate is equal to the subsidy amount originally approved? Should the applicant be given the option of either reducing the principal amount of the loan and keeping the originally requested interest rate unchanged, or increasing the interest rate on the loan and keeping the principal amount of the loan unchanged? If interest rates fall after the approval, should the specific dollar amount of approved subsidy stay the same, or be adjusted?

Alternatively, if the AHP approval commits to make a subsidized loan at a specified interest rate, then a number of issues are raised. First, should the amount of the subsidy to be charged against the AHP fund be calculated at the time the application is approved, or at the time of disbursement. If the calculation is not done at the time the application is approved but is done at the time of funding and interest rates have fallen since the approval, the amount of the subsidy provided to subsidize the advance would decrease and the amount of subsidy charged against the AHP fund would decrease. If the calculation is done at the time of funding and interest rates have risen since the approval, the amount of the subsidy provided to subsidize the advance would increase and the amount of subsidy charged against the AHP fund would increase. If the increase in subsidy is permitted to be charged against the AHP fund, should there be any limits on the amount of increase in subsidy? If the amount that could be charged against the AHP fund could be increased without limit, these charges could reduce the amount of funds available for future cycles of AHP funding. One option would be to put an upper limit, for example a specified number of basis points, as the maximum amount by which additional AHP funds would be provided to cover the interest rate increase. Another option would be to approve the amount of the subsidy as well as the interest rate on the advance at the time the advance is approved and permit the subsidy to be increased up to a specified amount. Another issue is whether funds from future AHP funding cycles should be used to pay for increased subsidies due to interest rate increases. The Board specifically requests comments on these options.

The Board is concerned about the calculation of subsidies where non-amortizing subsidized advances are used by members to fund amortizing AHP loans from members to sponsors. Since principal is repaid on a different schedule for amortizing loans than non-amortizing loans, the Banks must adjust their subsidy calculation methodologies to ensure that they have properly adjusted for these differences. As AHP principal is repaid to a member but not repaid to the Bank, the benefit of these subsidized funds may not be passed on to the ultimate borrower, as required in section 10(j)(9)(E) of the Act. See 12 U.S.C. 1430(j)(9)(E). Without proper adjustment for differences in the cash flows for an amortizing loan and an interest-only advance, the amount of subsidy actually received by a project will be less than the amount incurred by the Bank as an AHP expense. The Board specifically requests comments as to whether an amortizing advance structure is required to assure that the subsidy amount incurred by the Bank as an AHP expense matches the amount of the subsidy actually received by a sponsor. In addition, the Board requests comments as to whether there are alternative appropriate methods to deal with the discrepancy in the subsidy amounts where such advances are used to fund amortizing loans.

3. Verification at Initial Disbursement of Subsidized Advances or Direct Subsidies

Section 960.13 of the proposed rule provides that at the time of initial disbursement of a subsidized advance or

a direct subsidy by a Bank for an approved AHP application, the Bank shall verify in writing that the project complies with all applicable requirements contained in proposed § 960.9 and all obligations committed to in the approved AHP application. The Bank shall verify the amount of subsidy being provided in connection with the application and being charged against the AHP fund. The Bank shall include in its AHP implementation plan its verification procedures for such purposes.

*I. Monitoring Requirements*

Section 960.14 of the proposed rule sets forth the requirements for monitoring AHP-assisted housing projects. Section 960.14 is intended to implement the statutory requirement of section 10(j)(9)(C) of the Act, which provides that the Board's regulations shall ensure that advances made under the AHP be used only to assist projects for which adequate long-term monitoring is available. See 12 U.S.C. 1430(j)(9)(C).

The Board's existing AHP regulation provides that each Bank must monitor housing projects funded through its AHP. See 12 CFR 960.7(b). Section 960.14(a) of the proposed rule carries forward this requirement, and § 960.14(e) through (h) of the proposed rule sets forth the specific monitoring requirements for the Banks, which are discussed further below. Section 960.14(b) of the proposed rule provides that each Bank shall include in its AHP implementation plan an explanation of how it intends to meet the monitoring requirements of § 960.14 of the proposed rule.

Under § 960.14(c) of the proposed rule, a Bank may contract with an applicant, a state housing finance agency, or another entity to perform the tasks required to carry out the Bank's monitoring responsibilities; however, the Bank remains ultimately responsible for meeting the monitoring requirements set forth in § 960.14 (e) through (h) of the proposed rule. Thus, a Bank may decide in its monitoring plan that applicants will have no long-term monitoring responsibilities. Alternatively, the Bank may decide to require applicants to perform long-term monitoring as a condition of approval of an AHP award, or the Bank may determine what entity has the responsibility for monitoring on a project-by-project basis.

1. Applicant Monitoring of Construction or Rehabilitation

Section 960.14(d) of the proposed rule adds a new requirement that if a subsidized advance or direct subsidy is used to finance construction or rehabilitation of a project, the Bank shall require the applicant to monitor the construction or rehabilitation until completion, and to make progress reports to the Bank. Where an applicant finances construction or rehabilitation, the applicant usually monitors the progress of the project in connection with approving disbursements of funds to the borrower. Therefore, the Board believes that where an applicant uses a subsidized advance or direct subsidy to make loans for construction or rehabilitation of an AHP-assisted project, the applicant is in the best position to monitor the progress of such construction or rehabilitation and to make progress reports to the Bank.

2. Bank Monitoring Requirements

Section 960.14 (e) through (h) of the proposed rule sets forth the specific aspects of an AHP project that a Bank is required to monitor. Section 960.14(e) of the proposed rule sets for the monitoring responsibilities that are long-term in nature, as required by section 10(j)(9)(C) of the Act. See 12 U.S.C. 1430(j)(9)(C). Section 960.14(f) and (h) of the proposed rule sets forth the short-term monitoring responsibilities for compliance with the special needs and economic mobility priorities. Section 960.14(g) sets forth the monitoring responsibilities for the District Bank priority or priorities, which may or may not be long-term, depending on the nature of the priority selected by the Bank.

a. *Monitoring of long-term requirements.* Section 960.14(e) of the proposed rule sets forth the requirements for monitoring the long-term requirements for owner-occupied and rental housing projects assisted under the AHP.

(i) Owner-occupied housing units. Section 960.14(e)(1)(i) of the proposed rule provides that at the time a household enters into a purchase contract for an AHP-assisted housing unit or by the closing on the financing for such unit, or at the time a household that already owns the housing unit receives a commitment of a loan or a grant pursuant to the AHP, the Bank or its designee shall obtain a certification from the sponsor that the household has an income at or below the level committed to in the AHP application.

Section 960.14(e)(1)(ii)(A) of the proposed rule provides that during the required long-term period applicable to an owner-occupied housing unit assisted by a grant provided under the AHP, the Bank or its designee shall monitor the unit to determine whether it has been sold to a household with an income that exceeds the level committed to in the AHP application.

The Board requests comments on two proposed options for implementing this requirement. These options incorporate the use of sampling to monitor AHP-assisted projects. The Board recognizes that as the number of AHP-assisted projects in existence grows, the costs of monitoring these projects may place an undue financial burden on the Banks and the AHP. Monitoring AHP-assisted projects on a sample basis may be one way to minimize the costs of monitoring while continuing to meet the monitoring requirements of the Act.

Section 960.14(e)(1)(ii)(B) of the proposed rule proposes that monitoring shall include, but is not limited to, periodic review of relevant reports or certifications obtained from the sponsor, including any reports or certifications received pursuant to § 960.15(c)(1)(ii) of the proposed rule and, at least on a sample basis, periodic review of land title records at intervals determined by the Bank, based on the amount of funds received by the project pursuant to the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank.

An alternative option would be to require that the Bank only would have to review land title records on a sample basis, as determined by the Bank.

(ii) Rental housing projects. Section 960.14(e)(2)(i) of the proposed rule provides that the Bank shall require an AHP-assisted rental housing project to be subject to a deed restriction or other legally enforceable mechanism which requires that upon sale of the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the level committed to in the AHP application, the Bank or its designee must receive notice of the sale, and:

(1) The project's rental units, or portion thereof, must continue to be affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and the purchaser agrees to be subject to the same restrictions on resale that applied to the seller; or

(2) If the purchaser does not satisfy the requirements in (1) above, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay a pro rata portion of the grant to the

applicant, as provided in § 960.16(d)(1) of the proposed rule; or

(3) If the purchaser does not satisfy the requirements in (1) above, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

Section 960.14(e)(2)(ii) of the proposed rule provides that upon initial full occupancy of the units in an AHP-assisted rental housing project or one year after initial disbursement of the subsidized advance or direct subsidy, whichever occurs first, the Bank or its designee shall obtain a certification from the sponsor or the owner that the project's units, or portion thereof, are affordable for and occupied by households with incomes at initial occupancy at or below the levels committed to in the AHP application.

Section 960.14(e)(2)(iii)(A) of the proposed rule provides that during the long-term period for which the units, or portion thereof, of a rental housing project must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, the Bank or its designee shall monitor the project to determine whether the project's units, or portion thereof, remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application. The Board requests comments on several options for implementing this requirement.

Section 960.14(e)(2)(iii)(B) of the proposed rule proposes that monitoring shall include, but is not limited to, periodic review of relevant household income and rent reports or certifications obtained from the sponsor or the owner and, at least on a sample basis, periodic inspections of the project at intervals to be determined by the Bank, based on the amount of AHP assistance received by the project, the type and complexity of the project, and other factors deemed relevant by the Bank.

Another option would be that where funds other than funds provided under the AHP are the predominant source of financing for an AHP-assisted rental housing project and the monitoring activities of such other funding source are sufficient to determine the project's compliance with the requirements of the AHP, as committed to in the AHP application, the monitoring requirement would be deemed to be fulfilled. However, if the monitoring activities of such other funding source are not sufficient to determine the project's compliance with the requirements of the AHP, as committed to in the AHP application, the Bank would be required to monitor the project by conducting inspections, at least on a sample basis, as determined by the Bank, based on the amount of the funds received by the project under the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank. In the alternative, if the monitoring activities of such other funding source are not sufficient to determine the project's compliance with the requirements of the AHP, as committed to in the AHP application, could the Bank rely on monitoring activities of the predominant funding source as long as it is monitoring for compliance with requirements that are substantially similar to the AHP requirements?

The Board specifically requests comments on how random sampling could be used to monitor AHP-assisted rental housing projects to determine whether, during the long-term period committed to in the AHP application, the project's units continue to be affordable for and occupied by households with incomes at or below the levels committed to in the AHP application. For example, sampling could involve monitoring a portion of AHP-assisted rental projects at fixed intervals. The sampling method could be devised so that each project is monitored at least once during the long-term period committed to in the AHP application. Alternatively, the sampling method might be structured so that some, but not all, AHP-assisted rental projects are monitored during the long-term period committed to in the AHP application.

The Act requires that the AHP regulation must ensure that the AHP will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of the Act are satisfied. See 12 U.S.C. 1430(j)(9)(C). The Board requests comments as to whether it is appropriate to interpret this requirement in a manner that permits monitoring to be done by sampling that could result in some AHP-assisted rental projects not being monitored during the long-term period committed to in the AHP application. In addition, the Board specifically requests comments on whether there are sampling techniques that would ensure that each project is monitored in satisfaction of the monitoring requirement in the Act.

b. *Monitoring of special needs projects.* Section 960.14(f) of the proposed rule sets forth the requirements for monitoring a project that commits to meet a special need pursuant to proposed § 960.10(d)(3), either through providing units for persons with a special need or through providing a special service to occupants, as defined in the Bank's AHP implementation plan. If an applicant commits to fund a project that provides owner-occupied or rental housing units for persons with a special need, as defined in the Bank's AHP implementation plan, § 960.14(f)(1) of the proposed rule requires the Bank or its designee to obtain a certification from the sponsor or the owner upon completion and occupancy of the project that the project's units, or portion thereof, are occupied by persons with such special need.

If an applicant in its AHP application commits to fund a project that will provide a continuing special service to its occupants, as defined in the Bank's AHP implementation plan, such as child care, job training, medical care, or other services designed to meet the special needs of occupants, then § 960.14(f)(1) of the proposed rule provides that the Bank or its designee shall obtain a certification from the sponsor or owner upon completion and occupancy of the project that the special service is being provided to the occupants, as committed to in the AHP application.

Section 960.14(f)(2) of the proposed rule provides that, where an applicant in its AHP application commits to fund a housing project that will provide a continuing special service, the Bank or its designee shall monitor the project, as determined by the Bank in its AHP implementation plan, for at least one year from the date of initial full occupancy of the project to verify that the special service continues to be provided to the occupants, as committed to in the AHP application.

c. *Monitoring of District Bank priority or priorities.* Section 960.14(g) of the proposed rule sets forth the requirement for monitoring compliance with the District Bank priority or priorities established pursuant to proposed § 960.10(d)(4). Section 960.14(g)(1) of the proposed rule provides that if an applicant in its AHP application commits to fund a project that meets a District Bank priority or priorities, the Bank or its designee shall monitor the project to verify that it continues to meet the priority or priorities. Section 960.14(g)(2) of the proposed rule provides that the Bank shall set forth in its AHP implementation plan the nature, frequency and duration for monitoring compliance with the District Bank priority or priorities.

d. *Monitoring of economic mobility priority.* Section 960.14(h) of the proposed rule sets forth the requirement

for monitoring compliance with the economic mobility priority set forth under § 960.5(d)(5) of the proposed rule. Section 960.14(h) provides that if an applicant in its AHP application commits to fund a project that meets the requirements of § 960.5(d)(5), the Bank or its designee shall obtain a certification from the sponsor or the owner upon completion and full occupancy of the project, as required under § 960.15(c)(4), that the sponsor or the owner has met such requirements, as committed to in the AHP application.

*J. Reporting Requirements*

Section 960.15 of the proposed rule sets forth the reporting requirements for the Banks, the applicants, and the sponsors or owners of AHP-assisted projects. Section 960.15(a) of the proposed rule provides that each Bank shall provide accurate and timely reports and documentation to, and in the format requested by, the Board concerning the Bank's AHP, as the Board may from time to time require. See 12 CFR 960.6(a).

1. Applicant Reporting Requirements

Section 960.15(b)(1) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that each Bank shall require an applicant receiving a subsidized advance or direct subsidy to report at least annually to the Bank on the manner in which it has used the funds, with such reports continuing until the funds have been fully disbursed by the applicant. See 12 CFR 960.6(b).

The proposed rule eliminates the requirement in the Board's existing AHP regulation that the applicant certify that the AHP subsidy has been passed through to the borrower and continues to be used for approved purposes because, as discussed previously in the section on monitoring requirements, under the proposed rule applicants are not required to monitor the use of a subsidy in AHP-assisted projects, except during the period when a subsidized advance or direct subsidy is used to finance construction or rehabilitation of a project or where the applicant has agreed to undertake monitoring. See 12 CFR 960.6(c).

Section 960.15(b)(2) of the proposed rule adds a new requirement that if subsidized advances or direct subsidies are used to finance construction or rehabilitation of an AHP-assisted project, the Bank shall require the applicant to report to the Bank at reasonable intervals determined by the Bank, and described in the Bank's AHP implementation plan, on the progress of the construction or rehabilitation, until completion. This reporting requirement coincides with the requirement in § 960.14(d) of the proposed rule that the Bank shall require the applicant to monitor the construction or rehabilitation of an AHP-assisted project and make progress reports to the Bank where AHP subsidized advances or direct subsidies are used to finance such construction or rehabilitation.

2. Sponsor and Owner Reporting Requirements

Section 960.15(c) of the proposed rule sets forth the reporting requirements for sponsors and owners. These requirements coincide with the monitoring requirements set forth in § 960.14(e) through (h) of the proposed rule. Section 960.15(c)(1)(i) of the proposed rule provides that where a subsidized advance or direct subsidy is used to finance the purchase of an owner-occupied housing unit, the Bank shall require the sponsor to certify at the time a household enters into a purchase contract for such unit or at the closing on the financing for such unit that the unit has been sold to a household with an income at or below the level committed to in the AHP application. Where a subsidized advance or direct subsidy is used to finance the rehabilitation of an owner-occupied housing unit, the Bank shall require the sponsor to certify at the time a loan or grant is committed to fund such rehabilitation that the household that owns and occupies the unit has an income at or below the level committed to in the AHP application.

Section 960.15(c)(1)(ii) of the proposed rule provides that if an owner-occupied housing unit assisted by a grant provided under the AHP is not subject to a deed restriction or other legally enforceable mechanism restricting transfer of ownership to a household with an income at or below the level committed to in the AHP application, the Bank shall require the sponsor to report to the Bank or its designee, at least annually for the required long-term period, the number of any such units that are sold to households whose incomes exceed the level committed to in the AHP application, and to certify to the Bank that it is continuing to satisfy its commitment pursuant to its legally binding agreement with the Bank.

Section 960.15(c)(2) of the proposed rule provides that the Bank shall require the sponsor or the owner to certify upon initial full occupancy of the units in an AHP-assisted rental housing project, but no later than one year after initial disbursement of the subsidized advance or direct subsidy, and annually thereafter, that the project's units, or portion thereof, are affordable for and occupied by households with incomes at or below the levels committed to in the AHP application.

Section 960.15(c)(3) of the proposed rule provides that if an applicant in its AHP application commits to fund a project that will provide housing units for persons with a special need, or will provide a continuing special service to occupants pursuant to § 960.10(d)(3) of the proposed rule, the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the project's units, or portion thereof, are occupied by persons with such special needs or that a special service is being provided to occupants, as committed to in the AHP application.

Section 960.15(c)(4) of the proposed rule provides that if an applicant in its AHP application commits to fund a housing project that meets the requirements of the economic mobility priority under § 960.10(d)(5) of the proposed rule, the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the sponsor or owner has met such requirements, as committed to in the AHP application.

Section 960.15(d) of the proposed rule provides that each Bank shall require applicants or sponsors to provide such other reports to the Bank, in addition to the reports and documentation required by § 960.15 of the proposed rule, as the Bank deems necessary in order to fulfill its monitoring obligations under § 960.14 of the proposed rule.

*K. Corrective and Remedial Actions for Fraud or Non-Compliance With AHP Requirements*

Section 10(j) of the Act is silent on what specific corrective and remedial actions should be imposed when there is fraud or non-compliance with the requirements of the AHP. See 12 U.S.C. 1430(j). Accordingly, the Board has the discretion to determine, as a matter of policy, what those requirements should be.

The Board's existing AHP regulation provides that, where funds provided under the AHP will not be or are no longer being used for their approved purposes, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future AHP projects. See 12 CFR 960.8(a). The existing regulation requires the Bank, in recapturing such funds, to take any or all of the following actions, without limitation on other remedies, in its discretion:

a. Reprice the advance at the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance;

b. Call the advance;

c. Assess a prepayment fee; or

d. Require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance.

*Id.* § 960.8(b). In addition, some Banks have adopted procedures that require a direct subsidy to be converted to an advance if the project is found to be in non-compliance with the requirements of the AHP regulation.

A number of concerns have been raised about this recapture requirement. First, it may not be equitable to require the applicant to reimburse the Bank when it is the sponsor that is in non-compliance with the AHP requirements. Second, requiring recapture of the AHP subsidy could in some situations result in the applicant having to foreclose against a property in order to recover the funds to repay an advance to the Bank, thereby eliminating affordable housing units even when only a few of the units in the project may be out of compliance with AHP requirements.

In short, it has become clear through the operation of the AHP that the recapture remedy may not be the appropriate remedial action in all circumstances. Other less severe remedial actions may be more appropriate depending on the nature of the non-compliance that has occurred. In addition, the remedial actions should be directed only at the parties that are in non-compliance. Accordingly, the proposed rule contains provisions that tailor the remedial actions required to the nature of the non-compliance and the party committing the non-compliance, which are discussed further below.

1. Fraud or Willful Non-Compliance

Fraud and willful non-compliance are the most extreme examples of non-compliance with the AHP requirements. Accordingly, the proposed rule applies the most severe remedial actions—exclusion or suspension from future participation in the AHP and recovery of the full amount of the AHP subsidy—to parties that have committed fraud or are in willful non-compliance with respect to the AHP requirements.

Specifically, § 960.16(a)(1) of the proposed rule provides that in the event of an applicant's, sponsor's or owner's fraud with respect to the AHP requirements, the Bank shall exclude the applicant, sponsor or owner, respectively, on a permanent basis, from future participation in the AHP. In the event of an applicant's, sponsor's or owner's willful non-compliance with the AHP requirements, the Bank shall suspend the applicant, sponsor or owner, respectively, at least on a temporary basis, from future participation in the AHP during the period such willful non-compliance continues, and may exclude such party permanently from future participation in the AHP. The Board specifically requests comments as to whether the Banks should be able to determine whether fraud or willful non-compliance has occurred, or whether such determination should be made by the Board, or by either the Bank or the Board.

In addition, § 960.16(a)(2) of the proposed rule provides that in the event of an applicant's fraud or willful non-compliance with respect to the AHP requirements, the Bank shall recover from the applicant the full amount of the AHP subsidy provided to the project.

Section 960.16(a)(3)(i) of the proposed rule provides that in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements, the full amount of the AHP subsidy shall be recovered from the sponsor or owner by the applicant and returned to the Bank or, if previously agreed to by the Bank, shall be recovered by the Bank from the sponsor or owner. If efforts to recover the AHP subsidy from the sponsor or owner are unsuccessful, the applicant shall not be liable for such funds.

In order to be able to implement this recapture requirement, the applicant is required, under proposed § 960.16(a)(3)(ii), to have in place either:

(1) A legally binding agreement or other legally enforceable mechanism that permits it to recover these funds from the sponsor or owner; or

(2) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the sponsor or owner and the applicant that permits the Bank to recover these funds from the sponsor or owner.

Section 960.16(a)(4) of the proposed rule provides that the Board in its discretion may grant a waiver of any required remedial actions under this paragraph (a) upon written request by the Bank, applicant, sponsor or owner.

2. Other Types of Non-Compliance

Non-compliance by a party with the AHP requirements, such as due to inadvertent errors by such party or changes in circumstances that are outside such party's control, does not warrant imposition of the most severe remedial actions since the party lacked the intent to violate such requirements. In addition, in many such cases, the non-compliance can be rectified within a reasonable period of time.

Accordingly, § 960.16(b) of the proposed rule provides that in the event of inadvertent non-compliance by an applicant, sponsor or owner, the Bank shall provide such party with a reasonable period of time in which to take reasonable efforts, pursuant to a compliance plan approved by the Bank, to remedy the non-compliance. The Bank in its discretion may exclude such party from participation in the AHP while it is under a compliance plan, or in its discretion may require the applicant to increase the long-term period committed to in its AHP application for the project by the amount of time the project has been in non-compliance.

Section 960.16(b) of the proposed rule further provides that if the applicant, sponsor or owner takes no reasonable efforts to comply with the compliance plan, then such party is in willful non-compliance with the requirements of this part and is subject to the remedial actions contained in paragraph (a) of this section. If the applicant, sponsor or owner takes reasonable efforts pursuant to the compliance plan to remedy the non-compliance under paragraph (b) and such efforts are unsuccessful, the applicant, sponsor or owner would be subject to the remedial actions for fraud or willful non-compliance, but may apply to the Bank for a waiver of any such required remedial actions. The Bank shall report to the Board in writing on any waivers approved pursuant to paragraph (b) within 30 calendar days of such approval.

3. Sale of AHP-assisted Owner-Occupied Housing Unit to Income-Ineligible Household

*a. Recapture requirement.* Section 960.16(c) of the proposed rule provides generally that in the event that a household sells its AHP-assisted owner-occupied housing unit to a household whose income exceeds the level committed to in the AHP application prior to the end of the required long-term period, then:

(i) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller. The amount to be repaid shall be reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the unit after deduction for sales expenses, and to be returned to

the Bank. The proposed rule provides, however, that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan; or

(ii) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, then the applicant shall either repay to the Bank that portion of the advance used to make the loan to the seller or the Bank shall convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller shall be made available by the Bank for additional AHP projects.

b. *Exception to recapture requirement.* Section 960.16(c)(3) of the proposed rule provides that the recapture requirements described above shall not apply provided the sponsor, pursuant to a legally binding agreement with the Bank, assists another household with an income at or below the level committed to in the AHP application in the manner originally committed to in the AHP application.

This alternative approach is discussed in greater detail above under the monitoring section.

4. Sale of AHP-Assisted Rental Housing Project

Section 960.16(d) of the proposed rule provides that in the event that the owner of an AHP-assisted rental housing project sells the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, and the purchaser does not agree to maintain the project according to such commitments and to be subject to the same restrictions on resale that applied to the seller, then:

(i) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller, reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the project after deduction for sales expenses, and to be returned to the Bank, except that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan; or

(ii) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, then the applicant shall either repay the advance to the Bank or the Bank shall convert the advance to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize the advance shall be made available by the Bank for additional AHP projects.

*L. AHP Applications Involving Loan Funds and Loan Consortia*

Section 960.17 of the proposed rule sets forth specific requirements governing the use of loans and grants received by loan funds and loan consortia pursuant to the AHP. The Board's existing AHP regulation does not address specifically the use of loans or grants by loan funds or loan consortia pursuant to the AHP. See 12 CFR part 960. However, the Board has adopted policy guidelines for the Banks governing the award of subsidized advances and direct subsidies to applicants that then make loans or grants to loan funds and loan consortia (policy guidelines). See Board Resolution No. 93–54, June 23, 1993. The provisions in § 960.17 of the proposed rule, if adopted in final form by the Board, would incorporate the policy guidelines, with some modifications.

Section 960.17(a)(1) of the proposed rule provides generally that an applicant may use a subsidized advance or a direct subsidy to make a loan or a grant to a loan fund or loan consortium. Section 960.17(a)(2) of the proposed rule provides that AHP applications involving the use of loans or grants by loan funds or loan consortia are governed by the provisions of part 960, except as provided in § 960.17 of the proposed rule.

Section 960.17(b) of the proposed rule provides that the requirements for approval of an AHP application that proposes to use subsidized advances or direct subsidies to make a loan or a grant to a loan fund or loan consortium are the same as the requirements for approval applicable to all other AHP applications under § 960.8 of the proposed rule, except that an AHP application that involves a loan fund or loan consortium will be scored on the criteria that the loan fund or loan consortium proposes to use to select projects that will ultimately receive a loan or grant from the loan fund or loan consortium that is subsidized by the AHP.

This provision is intended to address the fact that loan funds and loan consortia do not have specific proposed projects in place at the time they apply for funds under the AHP. Section 960.17(b)(1) of the proposed rule therefore requires the Banks to score AHP applications involving loan funds or loan consortia based on the criteria that the loan fund or loan consortium commits to use when selecting the projects it will fund. This provision carries forward a requirement of the Board's existing policy guidelines.

In addition, § 960.17(b)(2) of the proposed rule provides that the Bank shall review and shall require the applicant to review each new rental housing project funded by a loan fund or loan consortium prior to disbursing a loan or grant to ensure that the project meets the threshold requirements of § 960.9 of the proposed rule and the project selection criteria committed to in the approved AHP application.

This is a change from the provision in the Board's existing policy guidelines that requires the Bank and the applicant to review both rental and owner-occupied housing projects prior to funding by a loan fund or loan consortium under the AHP. This change is intended to eliminate duplicative review of loan fund or loan consortium activities where funds are used to finance owner-occupied housing units under the AHP. However, since rental housing projects are more complex than owner-occupied housing projects, the Board believes that the applicant and the Bank should continue to review each rental housing project funded by a loan fund or loan consortium prior to disbursement of any funds to ensure that the project meets the feasibility, maximum subsidy, and other threshold requirements of § 960.9 of the proposed rule.

Section 960.17(c)(1) of the proposed rule carries forward the requirement in the Board's existing policy guidelines that if an applicant receives a subsidized advance and uses the proceeds of the advance to make a loan to a loan fund or loan consortium, the total value of the interest rate subsidy must be passed on to the borrower of the funds. Thus, § 960.17(c)(1) provides that a loan fund or loan consortium shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus a reasonable interest rate spread approved by the Bank. The applicant and the loan fund or loan consortium may determine between themselves

what proportion of the interest rate spread the applicant and the loan fund or loan consortium will share.

Section 960.17(c)(2)(i) of the proposed rule provides that a loan fund or loan consortium that receives a grant from an applicant pursuant to the AHP must either:

(A) Pass the entire grant on to the recipient;

(B) Use the entire grant to lower the interest rate on a loan to the borrower; or

(C) Lend the entire grant to the borrower to finance a rental housing project for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such loan is repaid before the end of the 30-year term, the entire amount of the grant must be repaid to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects.

This is a change from the provision in the Board's existing policy guidelines that prohibits a loan fund or loan consortium from using a grant from an applicant to make a loan to the borrower. The Board believes that if a loan fund or loan consortium lends a grant to a sponsor to finance rental housing units that will remain affordable for and occupied by income-eligible households for not less than 30 years, with all principal and interest payments deferred until the end of the loan term, then the loan fund or loan consortium has passed on the full amount of the AHP subsidy to the recipient or borrower of the funds, as required by section 10(j)(9)(E) of the Act. See 12 U.S.C. 1430(j)(9)(E). However, if the borrower repays the loan before maturity, the entire amount of the subsidy must be repaid to the applicant and forwarded by the applicant to the Bank to be returned to the AHP fund. Therefore, a loan fund or loan consortium may use a grant under the AHP to make a loan to the borrower under the conditions specified in § 960.17(c)(2)(i)(C) of the proposed rule.

Section 960.17(c)(2)(ii) of the proposed rule provides that if a loan fund or loan consortium provides both a loan and a grant to the borrower and the loan fund or loan consortium charges an origination fee for providing the loan, then any fee charged by the loan fund or loan consortium for providing the grant may not be paid with AHP subsidized advances or direct subsidies. The Board does not believe that such funds should be used to pay a fee for providing a grant to a project if the loan fund or loan consortium charges a fee for underwriting a loan to the same project.

Section 960.17(c)(2)(iii) of the proposed rule provides that when a loan fund or loan consortium receives a grant from an applicant pursuant to the AHP and uses the grant to lower the interest rate on a loan to the borrower, the interest rate calculation must be consistent with the procedure used by the Bank for calculating the amount of AHP subsidy needed for a subsidized advance, taking into account the source of funds used by the loan fund or loan consortium for its loans and the rate that normally would be charged for a loan of the type and term that is provided to the borrower.

Section 960.17(c)(3) of the proposed rule provides that any interest or other income earned by a loan fund or loan consortium on a loan or a grant received from an applicant, other than any approved fee or interest rate spread charged to the borrower, either (i) must be used by the loan fund or loan consortium to provide funds for additional projects meeting the threshold requirements in § 960.9 of the proposed rule and the criteria committed to in the approved AHP application, or (ii) must be forwarded to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects. This is a change from the provision in the Board's existing policy guidelines that allows loan funds and loan consortia to earn and retain *de minimis* amounts of income on loans or grants received from applicants. The Board believes that accounting for *de minimis* amounts of interest or other income earned on loans or grants received from an applicant is no less of an administrative burden than accounting for all such interest or other income earned. Therefore, the proposed rule requires all interest or other income earned on loans or grants received from an applicant to be used by the loan fund or loan consortium for additional AHP projects or returned to the applicant.

Section 960.17(c)(4) of the proposed rule provides that if loans or grants received by a loan fund or loan consortium pursuant to one AHP funding cycle are combined with loans or grants received by such entity pursuant to another AHP funding cycle in a single rental housing project, the loan fund or loan consortium shall require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria. This requirement does not apply when loans or grants received by a loan fund or loan consortium pursuant to separate AHP funding cycles are combined to finance a single owner-occupied housing project. The reason for this provision is that funds are more easily traceable to separate units in an owner-occupied housing project than to separate units in a rental housing project. Therefore, for purposes of owner-occupied housing projects, it is possible to use loans or grants from different AHP funding cycles according to the different criteria approved by the Bank in each of the respective funding cycles. However, the loan fund or loan consortium in its discretion may require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria.

Section 960.17(c)(5) of the proposed rule provides that any loans provided by a loan fund or loan consortium pursuant to the AHP that are repaid to such entity must be re-lent or provided as grants by such entity within a reasonable period of time after such repayments, or must be repaid to the applicant, which in turn must repay such funds to the Bank, and must be made available by the Bank for additional AHP projects. The Bank shall in its AHP implementation plan identify what constitutes a reasonable period of time for such purposes.

Section 960.17(d) of the proposed rule sets forth the monitoring and reporting requirements where an applicant makes loans or grants pursuant to the AHP to a loan fund or loan consortium which uses the funds to finance owner-occupied or rental housing units. Section 960.17(d)(1)(i) of the proposed rule requires the Bank to monitor such units, according to the monitoring requirements of § 960.14(e) through (h) of the proposed rule, to determine compliance with the long-term requirements, as well as compliance with the special needs priority, the District Bank priority or priorities, and the economic mobility priority, where applicable. In addition, § 960.17(d)(1)(ii) of the proposed rule provides that the Bank shall require the sponsor or owner of a project receiving a loan or grant from the loan fund or loan consortium to submit to the Bank such reports and certifications as are required under § 960.15(c) of the proposed rule. Section 960.17(d)(1)(iii) of the proposed rule provides that the Bank shall require the loan fund or loan consortium to report to the Bank any new loan or grant made using repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

Section 960.17(d)(2) of the proposed rule provides that the Bank may contract with either the applicant or the

loan fund or loan consortium to meet the monitoring requirements of § 960.14(e) through (h). Under § 960.17(d)(2)(i) of the proposed rule, if the Bank contracts with the applicant to meet such monitoring requirements, the Bank shall require the applicant to monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14(e) through (h) of the proposed rule. The Bank also shall require the applicant to require the sponsor or owner of the project to submit to the applicant such reports and certifications as are required under § 960.15(c) of the proposed rule. In addition, the applicant shall require the loan fund or loan consortium to report to the applicant any new loan or grant made using repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

Under § 960.17(d)(2)(ii) of the proposed rule, if the Bank contracts with the loan fund or loan consortium to meet the monitoring requirements in § 960.14(e) through (h) of the proposed rule, the Bank shall require the loan fund or loan consortium to monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14(e) through (h) of the proposed rule. The Bank also shall require the loan fund or loan consortium to require the sponsor or owner of the project to submit to the loan fund or loan consortium such reports and certifications as are required under § 960.15(c) of the proposed rule. In addition, the loan fund or loan consortium shall report to the Bank any new loan or grant made using repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

The monitoring and reporting requirements in § 960.17(d) of the proposed rule are a change from the provisions on monitoring and reporting in the Board's existing policy guidelines, which require the applicant to monitor the loan fund or loan consortium and require the Bank to monitor the applicant. This change is intended to conform the monitoring and reporting requirements for projects involving loan funds or loan consortia with the proposed monitoring and reporting requirements applicable to AHP-assisted housing projects generally under §§ 960.14 and 960.15 of this proposed rule.

Section 960.17(e)(1) of the proposed rule provides that a loan fund or loan consortium receiving loans or grants from applicants pursuant to the AHP and the project sponsors and owners receiving loans or grants from loan funds or loan consortia are subject to the corrective and remedial actions contained in § 960.16 of the proposed rule for fraud and non-compliance with respect to the AHP requirements.

Section 960.17(e)(2)(i) of the proposed rule provides that in the event of a loan fund's or loan consortium's fraud or willful non-compliance with respect to the requirements of this part, the full amount of the AHP subsidy shall be recovered from the loan fund or loan consortium by the applicant and returned to the Bank, or if previously agreed to by the Bank, shall be recovered by the Bank from the loan fund or loan consortium.

Section 960.17(e)(2)(ii) of the proposed rule requires an applicant that provides a loan or a grant to a loan fund or loan consortium pursuant to the AHP to have in place either:

(1) A legally binding agreement or other legally enforceable mechanism that permits the applicant to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the AHP requirements, the full amount of the AHP subsidy; or

(2) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the applicant, and the loan fund or loan consortium, that permits the Bank to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the AHP requirements, the full amount of the AHP subsidy.

Section 960.17(e)(3)(i) of the proposed rule provides that in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements, the full amount of the AHP subsidy shall be recovered by the loan fund or loan consortium from the sponsor or owner to be used for additional AHP projects.

Section 960.17(e)(3)(ii)(A) of the proposed rule provides that the loan fund or loan consortium shall have in place a legally binding agreement or other legally enforceable mechanism that permits it to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements, and the applicant shall have in place a legally binding agreement or other legally enforceable mechanism that permits it to recover from the loan fund or loan consortium such amount recovered by the loan fund or loan consortium from the sponsor or owner.

Section 960.17(e)(3)(ii)(B) of the proposed rule also provides that the applicant shall have in place, if the Bank agrees and such agreement is legally enforceable, a four-party agreement that includes the Bank, the applicant, the loan fund or loan consortium, and the sponsor or owner, that permits the Bank to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements.

Section 960.17(e)(4) of the proposed rule provides that the Board in its discretion may grant a waiver of any required remedial actions for fraud or willful non-compliance with respect to the AHP requirements, upon written request by the Bank, applicant, loan fund or loan consortium, sponsor or owner.

*M. Required Annual AHP Contributions*

Section 960.18 of the proposed rule requires each Bank to fund its AHP annually in accordance with the formula set forth in section 10(j)(5) of the Act. See 12 U.S.C. 1430(j)(5). Proposed § 960.18 is consistent with § 960.10 of the Board's existing AHP regulation, except for minor wording changes and deletion of language regarding required funding in 1990 through 1993 which is no longer necessary. See 12 CFR 960.10.

Specifically, proposed § 960.18 provides that each Bank shall fund its AHP in accordance with the following formula:

(a) In 1994, the greater of:

(1) 6 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $75 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

(b) In 1995 and each year thereafter, the greater of:

(1) 10 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

The term "net earnings of a Bank" is defined in proposed § 960.1. The definition has been revised from the

definition in the Board's existing AHP regulation in order to more accurately track its definition in section 10(j)(8) of the Act. See 12 CFR 960.1(j); 12 U.S.C. 1430(j)(8).

*N. Temporary Suspension of AHP Contributions*

Section 960.19 of the proposed rule sets forth the provisions governing temporary suspensions by Banks of their required annual AHP contributions. A number of revisions have been made to this section in the Board's existing AHP regulation in order to more accurately track the language in section 10(j)(6) of the Act concerning this section and to provide greater clarity. See 12 CFR 960.11; 12 U.S.C. 1430(j)(6).

1. Application for Temporary Suspension

Section 960.19(a)(1) of the proposed rule provides that if a Bank finds that the contributions required pursuant to proposed § 960.18 are contributing to the financial instability of the Bank, the Bank shall notify the Board promptly, and may apply in writing to the Board for a temporary suspension of such contributions.

Section 960.19(a)(2) of the proposed rule provides that a Bank's application for a temporary suspension of contributions shall:

(i) State the period of time for which the Bank seeks a suspension;

(ii) State the grounds for a suspension;

(iii) Include a plan for returning the Bank to a financially stable position; and

(iv) Be accompanied by the Bank's preceding year's annual financial report, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Board to consider.

The requirement in paragraph (ii) above is not explicitly required in the Board's existing AHP regulation. See 12 CFR 960.11(a).

Paragraph (iv) above adds to the Board's existing regulation that the Bank may include any other financial data it wishes the Board to consider.

2. Board Review of Application for Temporary Suspension

a. *Grounds for approval of application.* Section 960.19(b)(1) of the proposed rule provides that, in reviewing a Bank's application for a temporary suspension of contributions to determine the Bank's financial instability, the Board shall consider the following factors:

(i) Whether the Bank's earnings are severely depressed. This language was added to track the statutory standard in section 10(j)(6) of the Act. See 12 U.S.C. 1430(j)(6). In addition, the Board shall consider the extent to which the Bank's quarterly or annual net earnings have decreased from the preceding quarter or year, and whether such decline is projected to continue;

(ii) Whether there has been a substantial decline in the Bank's membership capital. The Board shall consider the extent to which the Bank's paid-in membership capital has declined in any given quarter or year, and whether such decline is projected to continue;

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding. The Board shall consider the extent to which the Bank's level of advances has declined in any given quarter or year, and whether such decline is projected to continue; and

(iv) Whether any other financial condition exists with respect to the Bank which has resulted in, or is likely to result in, the financial instability of the Bank.

b. *Limitations on grounds for approval of application.* Section 960.19(b)(2) of the proposed rule provides that the Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances (other than subsidized advances) to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

The "reduction in earnings" language replaces the term "financial instability" used in the Board's existing regulation, because the former is the term used in the Act. See 12 CFR 960.11(c); 12 U.S.C. 1430(j)(6).

In addition, the requirement in § 960.11(c)(5) of the Board's existing regulation that the Bank shall disapprove an application if for any other reason the temporary suspension is not warranted, is deleted in the proposed rule because it is not required by the Act, and limits the Board's discretion to balance reasons warranting approval of an application for a temporary suspension. See 12 CFR 960.11(c)(5); 12 U.S.C. 1430(j)(6).

3. Board Decision

Section 960.19(c) of the proposed rule provides that the Board shall approve or disapprove a Bank's application for a temporary suspension within 30 calendar days of receipt of such application, and the Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. A copy of the Board's decision shall be forwarded to each of the Banks.

4. Board Approval of Application for Temporary Suspension

Section 960.19(d)(1) of the proposed rule provides that if the Board approves a Bank's application for a temporary suspension, the Board's written decision shall specify the period of time such suspension shall remain in effect.

Section 960.19(d)(2) of the proposed rule provides that during the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of the Bank, and the Board shall continue to monitor the Bank's financial condition. The requirement that the Board shall monitor the Bank's financial condition is added because it is required by the Act. See 12 U.S.C. 1430(j)(6)(D).

Section 960.19(d)(3) of the proposed rule provides that if, prior to the conclusion of the temporary suspension period, the Board determines that the Bank has returned to a position of financial stability, the Board may, upon written notice to the Bank, terminate the temporary suspension.

5. Application for Extension of Temporary Suspension Period

Section 960.19(e)(1) of the proposed rule provides that if a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

Proposed § 960.19(e)(2) provides that the Board shall approve or disapprove a Bank's application for an extension of a temporary suspension period within 30 calendar days of receipt of such application.

Proposed § 960.19(e)(3) provides that the Board's decision on an application for an extension of a temporary suspension period shall be in writing, shall be accompanied by specific findings and reasons for such action, and shall state the effective date and time period if an extension is approved.

6. Notice to Congress

Section 960.19(f)(1) of the proposed rule provides that the Board shall notify 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 not less than 60 calendar days before any temporary suspension (or extension of such suspension) approved pursuant to this section takes effect.

Deleted from this provision is the requirement in the Board's existing regulation that a copy of the Board's suspension decision shall be forwarded to the Congress since, as discussed above, the Act only requires that the Board provide notice to Congress of the suspension decision. See 12 CFR 960.11(f); 12 U.S.C. 1430(j)(6)(F).

Proposed § 960.19(f)(2) provides that a temporary suspension (or extension of such suspension) shall become effective as determined by the Board, unless a joint resolution of Congress is enacted disapproving such suspension (or extension thereof). The proposed rule deletes the provision in the Board's existing regulation that a temporary suspension extension may not take effect until at least 30 days after the Board gives the required notice to Congress, because this is inconsistent with the requirement in the existing regulation that the Board must notify the Congress at least 60 days before such extension takes effect. See 12 CFR 960.11(g).

Proposed § 960.19(f)(2) also deletes from the Board's existing regulation the requirement that a joint resolution of Congress disapproving a suspension or extension of a suspension must be enacted prior to the Board's determined effective date, in order to track more closely the actual language in the Act. See 12 U.S.C. 1430(j)(6)(F).

*O. Affordable Housing Reserve Fund*

Consistent with the Board's existing AHP regulation, § 960.20(a) of the proposed rule provides that if a Bank fails to use or commit the full amount of its required annual contribution to the AHP, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Board. See 12 CFR 960.12. The 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. A Bank is deemed to have used or committed its required contribution where amounts are remaining at the end of the year because funding the next highest ranking project would exceed the Bank's required AHP contribution for the year. Such amounts remaining shall be combined with returned AHP funds to fund the next highest scoring AHP project or projects, or carried over by the Bank to the next year's AHP funding cycles.

The language allowing these amounts to remain at the end of the year is added in the proposed rule to take into account situations where amounts remain uncommitted at the end of the year because the balance of required AHP contributions remaining is too small to fund the Bank's next highest scoring AHP application.

The last sentence in proposed paragraph (a) also is new, making explicit that such amounts remaining and funds returned to the Bank shall fund other AHP projects and need not be transferred to the Affordable Housing Reserve Fund.

Section 960.20(b) of the proposed rule provides that by January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

Proposed § 960.20(c) provides that by January 31 of each year, the Board will notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

Section 960.12(d) of the Board's existing regulation governing how any Reserve Funds would be made available to the Banks, is deleted in the proposed rule. See 12 CFR 960.12(d). The Act states that such provisions would be determined pursuant to regulations issued by the Board. See 12 U.S.C. 1430(j)(7). Since there currently are no Reserve Funds and it is not anticipated that there will be any Reserve Funds in the near future, it is not necessary at this time to include provisions in the proposed rule dealing with this issue. The Board can issue regulations on this issue at a future date if such eventuality should arise.

*P. Advisory Councils*

Section 960.21 of the proposed rule sets forth provisions governing the appointment, operation, and responsibilities of the Advisory Councils to the Banks.

Section 960.21(a)(1) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that each Bank shall appoint an Advisory Council of seven to 15 persons who shall reside in the Bank's District and shall be drawn from community and nonprofit organizations actively involved in providing or promoting low- or moderate-income housing in the Bank's District. See 12 CFR 960.14(a). In addition, § 960.21(a)(1) of the proposed rule provides that the size of the Advisory Council shall be stated in the Bank's AHP implementation plan.

Section 960.21(a)(2) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that the Bank must actively solicit nominations from Bank members and community and nonprofit organizations and shall allow sufficient time for response, so that the nomination and appointment process is as broad and as participatory as possible. See 12 CFR 960.14(b), (d). The Bank also should solicit nominations from any other interested parties. In addition, § 960.21(a)(3) of the proposed rule provides that Advisory Council members shall be appointed by the Banks giving consideration to the size of the District and the diversity of low-income housing needs within the District.

The Board's existing AHP regulation provides that officials of state and local housing finance agencies may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership of the Advisory Council. See 12 CFR 960.14(c). It has been suggested that such officials should only be able to serve as non-voting members of an Advisory Council, unless the officials also are employed or associated with a private community or nonprofit organization actively involved in providing or promoting low- or moderate-income housing in the Bank's District. This suggestion is based on the view that the Advisory Councils are intended to serve as vehicles for private sector community and nonprofit organizations, not public agencies, to advise the Banks on low- and moderate-income housing programs and needs in the District and on the utilization of Bank advances for such purposes. See 12 U.S.C. 1430(j)(11). While acknowledging that officials of state and local housing finance agencies make valuable contributions to the Advisory Councils, the supporters of this viewpoint argue that these agencies have opportunities to influence the allocation of housing finance credit through means other than by voting representation on the Advisory Councils.

The Board specifically requests comments on whether or not officials of state and local housing finance agencies should be able to vote on the Advisory Councils and whether their representation should be limited so that it does not constitute an undue proportion of the Advisory Council membership.

Section 960.21(a)(4) of the proposed rule provides that Advisory Council

members shall serve for terms of two or three years, as determined by the Bank and set forth in its AHP implementation plan. The Board is proposing to give the Banks the option of appointing Advisory Council members for three-year terms in order to allow the Banks to benefit from the experience and familiarity with the AHP that Advisory Council members develop the longer they serve on an Advisory Council. In addition, § 960.21(a)(4) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that terms of Advisory Council members shall be staggered to provide continuity and experience in service. See 12 CFR 960.14(f). The proposed rule requires the Banks to explain in their AHP implementation plans how Advisory Council member terms will be staggered.

Section 960.21(a)(4) of the proposed rule contains a new provision limiting an Advisory Council member to six years of consecutive service. The Bank may set its own limits on consecutive terms within the six-year limit. This provision is intended to ensure that the membership of the Advisory Councils reflects the diverse and changing viewpoints of private sector community and nonprofit organizations on the low-income housing programs and needs of the Bank Districts.

Section 960.21(a)(5) of the proposed rule provides that an Advisory Council member who, subsequent to appointment, is no longer employed by or associated with a community or nonprofit organization actively involved in providing or promoting low- or moderate-income housing in the Bank's District may continue to serve on the Advisory Council until the end of his or her term. Allowing the Advisory Council member to serve out the remainder of his or her term promotes continuity in the collective experience of the Advisory Council. Further, the member may still have relevant experience related to low-income housing needs in the District, which may continue to benefit the Advisory Council. However, the Board recognizes that the Advisory Council member may no longer represent the interests of the community and nonprofit sector. Therefore, the Board specifically requests comments on this provision of the proposed rule. The Board also specifically requests comments on whether a member who is no longer employed by or associated with a community or nonprofit organization should be entitled to vote on the Advisory Council if he or she becomes a state or local housing finance agency official.

Section 960.21(b) of the proposed rule provides that each Advisory Council shall elect from among its voting members a chairperson and a vice chairperson.

Section 960.21(c) of the proposed rule carries forward the requirement of the Board's existing AHP regulation that each Advisory Council shall designate a member, or request that a member of the Bank's staff be designated, to act as secretary to the Advisory Council. See 12 CFR 960.14(g). The secretary shall record and maintain the minutes of the meetings of the Advisory Council, which shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

Section 960.21(d)(1) of the proposed rule adds a new requirement that, prior to the approval of the Bank's proposed AHP implementation plan by the Bank's board of directors, the Bank's Advisory Council shall review the proposed AHP implementation plan and provide its recommendations to the Bank's board of directors pursuant to the requirements of § 960.2(c) discussed above under the section on the adoption of the AHP implementation plan. This provision is intended to give the Advisory Councils a greater role in advising the Banks on how AHP funds should be allocated to meet the low-income housing needs in their Districts.

Section 960.21(d)(2) of the proposed rule adds a new requirement that upon request of the Advisory Council, the Bank shall provide the Advisory Council with copies of any AHP applications from prior AHP funding cycles. The Board is aware that some Banks have already adopted this practice. This requirement is intended to aid the Advisory Council members in evaluating how the AHP application priorities and scoring criteria adopted by the Bank in its AHP implementation plan affect the allocation of AHP funds among different types of housing projects. Further, this requirement is subject to any limitations of other laws that may require the Bank to keep information in an AHP application confidential. The Bank may require Advisory Council members to agree to keep all or parts of AHP applications confidential. The Board specifically requests comments on the advantages and disadvantages of allowing Advisory Council members to examine AHP applications received by the Bank in prior AHP funding cycles.

Section 960.21(e) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that the Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on low- and moderate-income housing programs and needs in the Bank's District and on the utilization of AHP subsidized advances and direct subsidies for these purposes. See 12 CFR 960.14(a).

Section 960.21(f) of the proposed rule requires each Advisory Council to submit to the Board annually by March 1 its analysis of the low-income housing activity of its Bank. This is a change from the January 31 date in the Board's existing AHP regulation, and is intended to give the Advisory Councils sufficient time after the end of the year to compile and evaluate year-end data in order to prepare their reports to the Board. See 12 CFR 960.14(j).

Section 960.21(g)(1) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that each Bank shall reimburse members of its Advisory Council for transportation and subsistence expenses they incur for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank. See 12 CFR 960.14(e). Section 960.21(g)(2) of the proposed rule adds a new requirement that each Bank shall pay members of its Advisory Council a fee for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank. The Board is proposing this change in light of the additional responsibility given to Advisory Council members under the proposed rule to advise the Banks on preparation of the AHP implementation plans. The Board specifically requests comments as to whether the Banks should be required to pay fees, and whether the amount to be paid should be set forth in the final AHP rule so that a uniform fee is paid to all Advisory Council members, or whether the fees should be set by the board of directors of each Bank.

*Q. Effective Dates*

Section 960.22 of the proposed rule provides that, if published as a final rule, this part shall become effective 30 days from such publication in the **Federal Register**. In addition, the provisions of this part, or portion thereof, may be applied to projects approved for AHP funding prior to the effective date of the final rule to the extent all relevant parties agree thereto in writing. The Finance Board would not need to approve any such retroactive application of the final rule. This proposed provision is intended to allow the retroactive application to

existing AHP projects of provisions of the revised AHP rule that are less restrictive than existing AHP requirements, to the extent all relevant parties (the Bank, the applicant, the sponsor, the owner, and if applicable, the loan fund or loan consortium) agree to such application of the new provisions. The Board specifically requests comments on this proposed provision.

### III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, see *id.* section 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

### IV. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The title, description of need and use, and the respondent description for the information collection requirements are discussed in the **SUPPLEMENTARY INFORMATION.**

Any comments on the proposed information collections should be sent to Gary Waxman, Paperwork Reduction Project, OMB, room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.12 and 1320.15, the following table discloses the estimated annual reporting burden for each collection of information in the proposed rule:

ESTIMATED ANNUAL REPORTING BURDEN

| Description of information collected | Average No. of respondents | × | Average No. of responses per respondent | = | Total average responses | × | Average hours per response | = | Total average hours |
|---|---|---|---|---|---|---|---|---|---|
| 1. AHP application | 1800 | | 1 | | 1800 | | 16.00 | | 28,800.0 |
| 2. Summary of approved AHP applications. | 12 | | 3 | | 36 | | 20.00 | | 720.0 |
| 3. Request for modification of approved AHP application. | 100 | | 1 | | 100 | | 2.00 | | 200.0 |
| 4. Summary of approved modifications to approved AHP applications. | 12 | | 4 | | 48 | | 4.00 | | 192.0 |
| 5. Request for waiver of AHP remedial actions. | 75 | | 1 | | 75 | | 10.00 | | 750.0 |
| 6. Advisory council report | 12 | | 1 | | 12 | | 200.00 | | 2,400.0 |
| Totals | 2,011 | | 2 | | 3,872 | | 8.54* | | 33,066.9 |

*Weighted average hours per response.

### List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend chapter IX, title 12, subchapter E, Code of Federal Regulations, by revising part 960 to read as follows:

## SUBCHAPTER E—AFFORDABLE HOUSING

## PART 960—AFFORDABLE HOUSING PROGRAM


**Subpart A—Definitions**

Sec.
960.1 Definitions.

**Subpart B—Establishment of AHP**

960.2 Bank establishment of AHP and adoption of AHP implementation plan.

**Subpart C—Authorized and Required Uses of AHP Subsidized Advances or Direct Subsidies**

960.3 Authorized uses of AHP subsidized advances or direct subsidies.
960.4 Specific use requirements for AHP subsidized advances or direct subsidies.
960.5 Long-term requirements.

**Subpart D—Applications for AHP Subsidized Advances or Direct Subsidies**

960.6 Establishment of AHP funding cycles and available AHP subsidies.
960.7 AHP application approval process.

**Subpart E—Requirements for Approval of AHP Applications**

960.8 General requirements for approval of AHP applications.
960.9 Threshold criteria for approval of AHP applications.
960.10 Scoring of AHP applications.
960.11 Modifications of approved AHP applications.

**Subpart F—Use and Verification at Initial Disbursement of AHP Subsidized Advances or Direct Subsidies**

960.12 Use of AHP subsidized advances or direct subsidies within reasonable period of time and verification of reasonable progress.
960.13 Verification at initial disbursement of AHP subsidized advances or direct subsidies.

**Subpart G—Monitoring and Reporting Requirements**

960.14 Monitoring requirements.
960.15 Reporting requirements.

**Subpart H—Corrective and Remedial Actions for Fraud or Non-Compliance With AHP Requirements**

960.16 Corrective and remedial actions for fraud or non-compliance.

**Subpart I—AHP Applications Involving Loan Funds and Loan Consortia**

960.17 AHP applications involving loan funds and loan consortia.

**Subpart J—Required AHP Contributions**

960.18 Required annual AHP contributions.
960.19 Temporary suspension of AHP contributions.

**Subpart K—Affordable Housing Reserve Fund**

960.20 Affordable Housing Reserve Fund.

**Subpart L—Advisory Councils**

960.21 Advisory Councils.

**Subpart M—Effective Dates**

960.22 Effective dates.


**Authority:** 12 U.S.C. 1430(j).

### Subpart A—Definitions

**§ 960.1 Definitions.**

As used in this part:

*Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

*Adjustment for household size* means:

(1) Adjusting the household income limit according to the following adjustment factors for households of more than or fewer than four persons:

| No persons | Percent adjustment |
|---|---|
| 1 | 70. |
| 2 | 80. |
| 3 | 90. |
| 4 | Base. |
| 5 | 108. |
| 6 | 116. |
| 7 | 124. |
| 8 | 132. |

(2) For each person in excess of eight, eight percent of the four-person household base income limit shall be added to the income limit for an eight-person household for the area.

*Advance* means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

*Affordable for low- or moderate-income households* means:

(1) For purposes of rental housing units, that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household (assuming a household size of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom) which has an income of 80 percent of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this income figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "affordable for low- or moderate-income households" means that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household which has an income of 80 percent of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes; or

(2) If a rental housing unit is targeted to households whose income is less than 80 percent of the median income for the area, then "affordable for low- or moderate-income households" means that the rent, including reasonable utility costs, charged to a household for such unit does not exceed 30 percent of the maximum qualifying income of the targeted households of the size expected to occupy the unit.

*Affordable for very low-income households* means:

(1) For purposes of rental housing units, that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household (assuming a household size of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom) which has an income of 50 percent of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this income figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "affordable for very low-income households" means that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household which has an income of 50 percent of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes.

(2) If a rental housing unit is targeted to a household whose income is less than 50 percent of the median income for the area, then "affordable for very low-income households" means that the rent, including reasonable utility costs, charged to a household for such unit does not exceed 30 percent of the maximum qualifying income of the targeted households of the size expected to occupy the unit.

*AHP* means the Affordable Housing Program established pursuant to this part.

*Applicant* means a member that applies to the Bank of which it is a member for AHP funds to be used pursuant to the requirements of this part.

*Area* means, for purposes of defining "median income for the area," a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.

*Bank* means a Federal Home Loan Bank established under the authority of the Act.

*Board* means the Federal Housing Finance Board.

*Cost of funds* means the estimated cost of issuing Bank System consolidated obligations with maturities comparable to the maturity of the AHP subsidized advance, as published from time to time by the Bank System's Office of Finance.

*Direct subsidy* means the direct cash payments of AHP funds made to the applicant by the Bank.

*Loan consortium* means:

(1) A nonprofit or for-profit corporation whose members are regulated financial institutions including at least one Bank member and that provides housing loans that benefit low- or moderate-income households; or

(2) A group of regulated financial institutions including at least one Bank member that have entered into a legal agreement with each other to jointly make loans to finance housing for low- or moderate-income households.

*Loan fund* means a nonprofit or for-profit organization that is not owned or controlled by a regulated financial institution and which aggregates capital from public and private sources to provide financing for housing for low- or moderate-income households.

*Low- or moderate-income household* means a household which has an income of 80 percent or less of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "low- or moderate-income household" means a household which has an income of 80 percent or less of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes.

*Low- or moderate-income neighborhood* means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

*Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.7 and 933.11 of this chapter.

*Neighborhood* means a census tract; a combination of census tracts; or a geographic location designated in comprehensive plans, ordinances or other local documents as a neighborhood, village or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government and for which income information is available to determine the percentage of households with incomes satisfying the requirements of § 960.10(d)(5). If the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

*Net earnings of a Bank* means the net earnings of a Bank for a calendar year after deducting the Bank's *pro rata* share of the annual contribution to the Resolution Funding Corporation required under section 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

*Nonprofit organization* means a private organization that is a tax-exempt entity under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)), or a private nonprofit organization that is organized or chartered under state or local laws and has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

*Remaining useful life* means the period during which the housing remains in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced or repaired as becomes necessary.

*Sponsor* means a nonprofit or for-profit organization or public entity that is integrally involved in a rental housing project by owning or being the general partner of a partnership that owns the project, or that is integrally involved in exercising control over an owner-occupied housing project by developing the project or by qualifying borrowers and providing or arranging financing for the owners of the housing units.

*State* means a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

*Subsidized advance* means an advance whose interest rate is reduced below the cost of funds, with the interest rate differential subsidized using AHP funds in the amount of the net present value of the difference between the cost of funds and the rate charged on the subsidized advance over the term of the advance.

*Subsidy* means:

(1) The direct cash payments of AHP funds provided by the Bank to the applicant; or

(2) The amount of AHP funds necessary to compensate the Bank for the net present value of the difference between the cost of funds and the rate charged on the subsidized advance to the applicant over the term of the advance.

*Very low-income household* means a household which has an income of 50 percent or less of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "very low-income household" means a household which has an income of 50 percent or less of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes.

## Subpart B—Establishment of AHP

### § 960.2 Bank establishment of AHP and adoption of AHP implementation plan.

(a) It is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through providing subsidized advances and direct subsidies to members pursuant to this part.

(b) Each Bank's board of directors shall establish an AHP, which shall be funded pursuant to the requirements of § 960.18. The Bank shall make subsidized advances to applicants pursuant to its AHP and shall operate its AHP in conformity with an annual AHP implementation plan and the requirements of this part. Direct subsidies provided by a Bank to applicants pursuant to its AHP shall be provided in conformity with the Bank's AHP implementation plan and the requirements of this part. Each Bank's AHP implementation plan shall be approved by the Board before it is effective. The Bank's AHP implementation plan shall meet the requirements of this part, and shall include:

(1) The Bank's AHP funding cycle schedule, including application due dates, as required by § 960.6(a)(1);

(2) The Bank's priorities, and scoring criteria for applications, as required by §§ 960.8(a) and 960.10;

(3) The Bank's procedures to ensure satisfaction of the long-term requirement, as required by § 960.5 (a)(1) and (b);

(4) The Bank's requirements for and verification procedures concerning:

(i) The use of subsidized advances or direct subsidies within a reasonable period of time after approval of an AHP application, as required by § 960.12(a); or

(ii) The use of loans or grants within a reasonable period of time after repayment of such funds to a loan fund or loan consortium, as required by § 960.17(c)(5);

(5) The Bank's verification procedures upon initial disbursement of subsidized advances or direct subsidies, as required by § 960.13;

(6) The Bank's monitoring plan, as required by § 960.14(b);

(7) The Bank's reporting requirements for applicants during the construction or rehabilitation phase, as required by § 960.15(b)(2);

(8) An explanation of circumstances justifying undue hardship waivers by the Bank of imposition of remedial actions, as required by § 960.16 (c)(1) and (d)(1); and

(9) The Bank's determination regarding the number of persons that may serve on the Bank's Advisory Council and their terms, as required by § 960.21(a) (1) and (4).

(c) The Bank's proposed AHP implementation plan shall be submitted to its Advisory Council at least 45 calendar days before it is considered by the Bank's board of directors. The Advisory Council shall review the proposed AHP implementation plan and submit its recommendations to the Bank's board of directors at least seven calendar days before the Bank's board of directors is scheduled to vote on the AHP implementation plan. The Bank's board of directors shall vote on the proposed AHP implementation plan, and shall submit its approved plan to the Board for action. The Board shall approve or disapprove any proposed AHP implementation plan it receives within 60 calendar days of receipt. A Bank's AHP implementation plan must be effective at least 45 calendar days before the due date for AHP applications. Each Bank shall submit its AHP implementation plan to the Board for approval no later than 180 calendar days after [the publication of the final rule in the **Federal Register**].

(d) The Bank's AHP implementation plan adopted pursuant to this section

shall be made available by the Bank to the public upon request.

(e) The Board will approve or disapprove proposed amendments to a Bank's approved AHP implementation plan submitted by the Bank within 60 calendar days of receipt.

## Subpart C—Authorized and Required Uses of AHP Subsidized Advances or Direct Subsidies

### § 960.3 Authorized uses of AHP subsidized advances or direct subsidies.

(a) *General.* Applicants may use subsidized advances or direct subsidies received from a Bank pursuant to this part only for the uses set forth in paragraphs (b) and (c) of this section and subject to the long-term requirements set forth in § 960.5.

(b) *Owner-occupied housing units.* Applicants may use subsidized advances or direct subsidies received from a Bank pursuant to this part to finance the purchase, construction or rehabilitation of owner-occupied housing units by or for low- or moderate-income households.

(c) *Rental housing units.* Applicants may use subsidized advances or direct subsidies received from a Bank pursuant to this part to finance the purchase, construction or rehabilitation of rental housing units, at least 20 percent of the units of which will be occupied by and affordable for very low-income households.

### § 960.4 Specific use requirements for AHP subsidized advances or direct subsidies.

(a) *Examples of specific authorized and unauthorized uses.* (1) Authorized uses of subsidized advances or direct subsidies include, but are not limited to, the following costs related to the purchase, construction or rehabilitation of housing:

(i) Real property purchase and improvement costs;

(ii) Construction or rehabilitation costs, including labor and materials, and contractor profit and overhead allowances;

(iii) Costs integral to the purchase or development of housing including, but not limited to, project-related: Architectural, inspection and engineering fees; local building permit and planning fees; accounting costs; survey costs; appraisal fees; title insurance and other insurance costs; performance bond and other bond fees; recording fees; credit report fees; property taxes; residential relocation costs where such costs are part of a relocation plan; legal fees; syndication fees; costs of translating resident documents to another language; loan commitment, loan origination and other loan financing fees for administrative costs other than costs of administering the AHP award; developer's fees; and marketing costs;

(iv) Prepayment fees imposed by the Bank on an applicant for a subsidized advance that is prepaid in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(v) Capitalization of reserve fund(s) necessary for the successful operation of rental housing projects, including replacement reserves, rent-up reserves, operating deficit reserves, and sinking fund reserves used for the transfer of the project to nonprofit ownership when associated with a low income housing tax credit transaction (26 U.S.C. 42);

(vi) Cancellation fees imposed by the Bank on an applicant for a subsidized advance commitment that is canceled and converted to and disbursed as a direct subsidy in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(vii) Refinancing of an existing loan in conjunction with the purchase, construction or rehabilitation of housing, provided the subsidized advance or direct subsidy and the proceeds of the refinancing are used only to retire existing debt and to benefit low- or moderate-income households and, in the case of refinancing in order to rehabilitate a project, there is a minimum of $2,500 per unit spent on such rehabilitation; and

(viii) Tenant services, tenant counseling and homeowner counseling costs that are a condition imposed by a lender to obtain financing from such lender and which are necessary for the successful operation of the project.

(2) Uses of subsidized advances or direct subsidies that are not authorized include, but are not limited to, AHP administrative costs of the applicant or the Bank.

(b) *Use of funds requirements.* (1)(i) The total amount of a direct subsidy provided by the Bank to an applicant under this section must be passed on by the applicant to the recipient.

(ii) An applicant receiving a subsidized advance from a Bank shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus an interest rate spread approved by the Bank.

(2) If an applicant receives a subsidized advance or direct subsidy from a Bank or prepayment of a loan originally made under the AHP, any interest or other income earned by the applicant on such funds, not including any approved fee or interest rate spread charged to the borrower, must be forwarded to the Bank to be used for additional AHP projects, except for interest or other income earned by the applicant within 30 calendar days of receiving the subsidized advance or direct subsidy or of receiving prepayment of a loan originally made under the AHP.

(3) A direct subsidy received by an applicant from a Bank that is provided by such applicant to a sponsor may be lent by the sponsor in connection with an AHP rental housing project involving low-income housing tax credits, provided the subsidy is lent by the sponsor for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such a loan is repaid before the end of the 30-year term, the entire amount of the direct subsidy must be repaid to the Bank.

(4) If an applicant receives a subsidized advance or direct subsidy from a Bank, and in turn provides both a loan and a grant to a borrower and charges an origination fee for providing the loan, then any fee charged by the applicant for providing the grant may not be paid with the AHP subsidized advance or direct subsidy.

### § 960.5 Long-term requirements.

(a) *Rental housing units.* (1) At least 20 percent of the rental housing units in a project financed under the AHP with subsidized advances or direct subsidies shall remain affordable for and occupied by very low-income households for a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units, except as provided in paragraph (a)(3) of this section. An applicant and the project sponsor shall state in the AHP application their commitment regarding satisfaction of the long-term income-eligibility, affordability and income-targeting requirements contained in this paragraph (a)(1). An applicant may commit to maintain additional units as affordable for and occupied by low- or moderate-income households, which commitment shall be for a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units, except as provided in paragraph (a)(3) of this section. The Bank's AHP implementation plan shall set forth the procedures that the Bank will follow to effectively implement the requirements of this paragraph (a)(1).

(2) A household occupying a rental housing unit subject to the income-targeting requirement of paragraph (a)(1)

of this section is required to satisfy the income-eligibility requirement of such paragraph applicable to such income-targeted unit, as committed to in the AHP application, upon initial occupancy. The household may continue to occupy the income-targeted unit even if its income increases above the income-eligibility requirement for such unit. The unit may continue to count toward meeting the income-targeting requirement committed to in the AHP application, provided the rent charged remains affordable to the household as defined in § 960.1; however, if the household's income rises above 140 percent of the income-targeting level committed to in the AHP application, the sponsor must make the next available rental housing unit in the project affordable to and available for occupancy by a household whose income is at or below the income-targeting level committed to in the AHP application for the original unit, and once the next available rental housing unit is so occupied, the rent charged on the unit occupied by the household whose income has risen shall no longer be subject to the requirement that it be affordable for households at the income-targeting level committed to in the AHP application.

(3) An owner of an AHP-assisted rental housing project may sell the project prior to the end of the long-term period during which the project's rental units, or applicable portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application; however, either:

(i) The purchaser must agree to continue the project's rental units, or applicable portion thereof, as affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and must agree to be subject to the same restrictions on resale that applied to the seller; or

(ii) If the purchaser does not satisfy the requirements of paragraph (a)(3)(i) of this section, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay a pro rata portion of the grant as provided in § 960.16(d)(1); or

(iii) If the purchaser does not satisfy the requirements of paragraph (a)(3)(i) of this section, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

(b) The Bank's AHP implementation plan shall permit the owner of an AHP-assisted rental housing project to sell such project as provided for in paragraph (a)(3) of this section.

## Subpart D—Applications for AHP Subsidized Advances or Direct Subsidies

### § 960.6 Establishment of AHP funding cycles and available AHP subsidies.

(a) *Establishment of AHP funding cycles.* (1) Each Bank shall establish at least two but no more than four AHP funding cycles per year during which applications for subsidized advances or direct subsidies will be accepted. The schedule for such funding cycles, including application due dates, is to be determined by the Bank in its discretion, but shall allow for sufficient time intervals to ensure an adequate pool of applicants to compete in each funding cycle. The funding cycle schedule, including application due dates, shall be described in detail in the Bank's AHP implementation plan.

(2) Each Bank shall inform the general public and its members of the number and dates of its AHP funding cycles for the year and the approximate amount of available AHP subsidies for each funding cycle at least 45 calendar days before the due date for AHP applications for the first funding cycle for the year.

(b) *Available AHP subsidies.* Each Bank shall allocate comparable amounts of AHP subsidies for each AHP funding cycle during the year.

### § 960.7 AHP application approval process.

(a) *Application.* Each Bank shall require applicants for subsidized advances or direct subsidies to submit to the Bank an application which, at a minimum, contains all of the information described in this paragraph and any other information which the Bank determines is necessary in order to take action on such application pursuant to this part, including the following:

(1) A concise description of the purpose of the request and proposed uses of the funds, and its relationship to the priorities identified in § 960.10(d), the targeting criterion identified in § 960.10(e), and the other objectives identified in § 960.10(f);

(2) A statement of how the project will satisfy the authorized uses and long-term requirements, including a description of legal mechanisms to be used to ensure compliance by the project with such requirements, contained in §§ 960.3 and 960.5;

(3) A statement of how the project will comply with the fair housing law requirement contained in § 960.9(b);

(4) A statement of how the project will satisfy the feasibility requirement contained in § 960.9(d);

(5) A statement of how the project's sponsor satisfies the qualification requirement contained in § 960.9(e);

(6) A statement of whether a subsidized advance or direct subsidy has been requested and the amount of such funds requested;

(7) A disclosure of whether or not the applicant has a direct or indirect interest in the property or project. If the applicant has an interest in the property and the application is approved, then prior to the transfer of AHP funds to the project, an independent current appraisal of the fair market value of such property must be provided, unless the applicant demonstrates that the property is being sold or otherwise transferred to the sponsor at a price substantially below the fair market value;

(8) A statement of the project's costs; and

(9) A certification from the applicant's, the sponsor's and the loan fund's or loan consortium's board of directors, or president or senior officer if so delegated by the board of directors, that the applicant, the sponsor and the loan fund or loan consortium will comply with all requirements of this part and all obligations committed to in the AHP application.

(b) *Action on applications.* (1) The Bank shall review, score and take action on an AHP application pursuant to the requirements contained in §§ 960.8, 960.9 and 960.10, and shall notify the applicant of such action no later than 60 calendar days after the application due date for the AHP funding cycle.

(2) The board of directors of each Bank shall have the authority to approve or disapprove AHP applications received, and may delegate such authority to the president or other senior officers of the Bank.

(3) Within 30 calendar days of each Bank's approval of the AHP applications for a given AHP funding cycle, the Bank shall forward to the Board a summary of each approved AHP application. The summary shall:

(i) Briefly describe the project, including the applicant, the loan fund or loan consortium, if applicable, and the sponsor—whether nonprofit, for-profit or public agency, the type of housing, the location, the long-term period committed to, the number of housing units including the number of units affordable for very low-, low- or moderate-income households or for

households at any other income levels committed to in the AHP application, the development cost, other financing sources, and special needs populations served;

(ii) State the reason for the points awarded under each of the Bank's scoring criteria for the project;

(iii) Indicate whether a subsidized advance or direct subsidy was approved by the Bank for the project, the use of such funds, and the amount of such funds approved; if a subsidized advance was approved, the summary shall indicate the amount of the advance, the advance rate, the amortization schedule for the advance, the term to maturity, the applicable cost of funds, and the date as of which the cost of funds was determined;

(iv) Indicate whether the project received approval in a prior AHP funding cycle, or if the project is an extension, expansion, continuation or reconfiguration of a previously approved AHP project;

(v) Describe how the project will be monitored and by what entity;

(vi) Describe the legal mechanisms to be used to ensure compliance by the project with the long-term requirement contained in § 960.5;

(vii) Include a summary in chart form showing all AHP applications received by the Bank in the particular AHP funding cycle, with the score each application received for each scoring criterion, and the total score received by each project; and

(viii) Include any other information required by the Board.

## Subpart E—Requirements for Approval of AHP Applications

### § 960.8 General requirements for approval of AHP applications.

(a) Each Bank shall evaluate the AHP applications received to determine if they satisfy the threshold criteria in § 960.9. All applications that meet the threshold criteria shall be scored pursuant to the criteria contained in § 960.10, as set forth in the Bank's approved AHP implementation plan.

(b) The Bank shall approve the applications in descending order starting with the highest scoring application until the total AHP funding amount for the particular funding cycle, except for any amount insufficient to fund the next highest scoring project, has been allocated. The Bank also may approve the next four highest scoring applications as alternates and, within one year of approval by the Bank, may fund such alternates if any previously committed AHP funds become available.

### § 960.9 Threshold criteria for approval of AHP applications.

*Threshold criteria.* An AHP application must meet all of the threshold criteria set forth in this section in order to be considered for scoring under § 960.10 and for AHP funding approval.

(a) *Authorized and required uses requirements.* The AHP application must indicate that the use of the subsidized advance or direct subsidy set forth in the AHP application for the proposed project will comply with the requirements for authorized and required uses of such funds contained in §§ 960.3, 960.4 and 960.5.

(b) *Fair housing law requirements.* The AHP application must indicate that the project sponsor will comply with any applicable fair housing law requirements and must indicate how the sponsor proposes to affirmatively further compliance with such requirements.

(c) *Twenty percent requirement and alternatives.*—(1) *General.* (i) Except as provided in paragraph (c)(2) of this section, a Bank shall not offer subsidized advances or direct subsidies to applicants in excess of that amount needed to reduce the monthly housing costs (as defined in paragraph (c)(1)(ii) of this section) for income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local or private subsidized assistance are being used in conjunction with AHP subsidized advances or direct subsidies, the total amount of subsidized assistance, including funds provided under the AHP, shall not be in excess of the amount needed to reduce the monthly housing costs (as defined in paragraph (c)(1)(ii) of this section) for the income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income.

(ii) For purposes of paragraph (c)(1) of this section, monthly housing costs are defined as:

(A) For households in AHP-assisted owner-occupied housing units, mortgage principal and interest payments, real property taxes, homeowners' insurance, a reasonable estimate of utility costs excluding telephone service, and for households in AHP-assisted condominium, cooperative, mutual housing or other housing projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit; and

(B) For households in AHP-assisted rental housing units, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service.

(iii) A household subject to the 20 percent requirement set forth in paragraph (c)(1) of this section is required to meet such requirement only at the time it initially purchases or occupies a unit.

(2) *Alternative requirements.* (i) The requirement in paragraph (c)(1) of this section shall not apply where a Bank provides subsidized advances or direct subsidies to an applicant for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the household meets the housing payment requirements of the other program.

(ii) The requirement in paragraph (c)(1) of this section shall not apply where:

(A) The total amount of the AHP funds provided through a subsidized advance or direct subsidy used to finance rehabilitation of a housing unit by a very low-income household that already owns and occupies the housing unit is $10,000 or less per such household; or

(B) The total amount of the AHP funds provided through a subsidized advance or direct subsidy used to finance the purchase of a housing unit by a very low-income household is $5,000 or less per such household.

(iii) The requirement in paragraph (c)(1) of this section shall not apply where the total amount of the AHP funds provided through a subsidized advance or direct subsidy used to finance rehabilitation or purchase of a housing unit by a low- or moderate-income household is $5,000 or less per such household.

(iv) The requirement in paragraph (c)(1) of this section shall not apply where a Bank provides subsidized advances or direct subsidies ultimately benefiting a household with an income at or below the level committed to in the AHP application, which is participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of $2,000 per household, working cooperatively with others, to construct or rehabilitate housing which the household or other program participants

are purchasing or already own and occupy, and that involves supervision of the work performed by skilled builders or rehabilitators.

(d) *Project feasibility.* The AHP application must indicate that the proposed project is feasible in that, based on an analysis of project sources and uses of funds, project multi-year operating pro formas for rental housing projects, projections of sales and prices for owner-occupied housing units, and local market conditions, the project is financially viable and likely to be completed within a reasonable period of time, and is likely to operate or sell and remain affordable to the designated income-eligible households over the long-term period committed to in the AHP application.

(e) *Qualifications of sponsor.* The AHP application must indicate that the sponsor has the qualifications and ability to perform its responsibilities as committed to in the AHP application.

(f) *Creditworthiness of applicant.* The applicant must have the ability to qualify for an advance from the Bank to fund the project described in the AHP application.

**§ 960.10 Scoring of AHP applications.**

(a) *General.* The Bank shall score AHP applications that satisfy all of the threshold criteria in § 960.9 according to the scoring methodology set forth in this section which shall be included in the Bank's approved AHP implementation plan.

(b) *Priority treatment.* Each application is first evaluated to determine if it will receive priority treatment. For purposes of determining priority, an application can receive a maximum of eight points for each of the five priority categories set forth in paragraph (d) of this section. A Bank in its AHP implementation plan shall define more specifically each of the five priority categories and explain specifically how points will be awarded for satisfying each category. An application will be deemed to meet a particular priority category if it is awarded at least four points for that priority category. Applications meeting at least two priority categories shall receive priority treatment.

(c) *Order of scoring.* Applications that qualify for priority treatment pursuant to paragraph (b) of this section shall be scored before applications that do not qualify for priority treatment. The applications that do not qualify for priority treatment will not be scored unless there are insufficient priority treatment applications to utilize the total AHP funding amount for the funding cycle.

(d) *Priorities—40 point category.* The Bank shall total the points received by each applicant for purposes of determining priority for all of the five priority categories set forth in this paragraph (d); it shall award 40 points to the application(s) that receive the highest number of total points, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. The five priority categories are as set forth in the following paragraphs (d)(1) through (5) of this section.

(1) *Government-owned properties.* Applications for projects that finance the purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, including but not limited to the Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation.

(2) *Nonprofit or state or local government sponsored projects.* Applications for projects that finance the purchase, construction or rehabilitation of housing the sponsor of which is a nonprofit organization, a state or political subdivision of a state, a local housing authority or a state housing finance agency.

(3) *Special needs projects.* Applications for projects that address special needs, which shall be defined by the Bank in its AHP implementation plan, which special needs may include but are not limited to:

(i) Empowering the households or residents through programs such as resident management of the property, self-help housing, homesteading, and sweat equity;

(ii) Providing housing for special needs populations such as homeless persons, abused or battered persons, persons with AIDS, mentally or physically disabled persons, or persons with substance abuse problems;

(iii) Providing housing in rural areas or areas targeted by local, state or federal governments for community development or revitalization through the development of affordable housing or economic investment; or

(iv) Providing housing with special services to meet the needs of low- or moderate-income households including, but not limited to, child care, job training, medical care, substance abuse programs, independent living skill training, and rental household and homeowner household counseling.

(4) *District Bank priority.* Applications for projects that meet one or more priorities recommended by the Bank's Advisory Council and adopted by the Bank's board of directors that each address a housing need in the Bank's district and are consistent with the purposes of this part. The Bank shall describe in its AHP implementation plan how the points for the priority or priorities will be distributed.

(5) *Economic mobility priority.* Applications for projects that provide housing for low- or moderate-income households that move from low- or moderate-income neighborhoods or housing projects to neighborhoods, mixed-income buildings or owner-occupied housing developments in which at least 50 percent of the households have incomes above the median income for the area, as published by the U.S. Department of Housing and Urban Development.

(e) *Targeting—20-point category.* An application can receive a maximum of 20 points for this category. The Bank shall award points to applications based on the extent to which the project(s) serve(s) the greatest percentage of very low-, low- and moderate-income households, in that priority order. In the alternative, if a weighted-average scoring methodology is provided in the Bank's AHP implementation plan, the Bank shall award points to an application based on the extent to which the project has the lowest weighted-average income determined by multiplying the percentage of units reserved for households at certain income levels by those incomes expressed as a percentage of median income, and adding the totals. Applications shall be scored relative to each other with the maximum number of points allowable awarded to the application(s) that best achieve(s) the targeting objective, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. However, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group.

(f) *Other objectives.* The five other objectives categories are as set forth in the following paragraphs (f)(1) through (5) of this section. The Bank in its AHP implementation plan shall define more specifically each of the five other objectives categories and explain specifically how points will be awarded for satisfying each category. For each category, the Bank shall award the maximum number of points allowable for such category to the application(s) that best achieve(s) the objective, and the remaining application scores shall

be adjusted and awarded points on a declining scale basis.

(1) *AHP subsidy per unit—10-point category.* An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-subsidized unit. Projects should be scored relative to each other; however, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group. This scoring criterion may not include a leveraging criterion whereby the application is scored based on the percentage of the project's total development cost that is to be financed with the AHP subsidy.

(2) *Applicant participation—5-point category.* An application can receive a maximum of 5 points for this category. The Bank shall award points to applications based on the extent to which the project involves participation by applicants other than the receipt of a subsidized advance or direct subsidy under the AHP. Such participation can be financial or non-financial, including but not limited to debt or equity financing of the project, grants to the project, applicant involvement on the boards of nonprofit sponsors, and applicant provision of technical assistance to the nonprofit sponsors for the project.

(3) *Community involvement—10-point category.* An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which there is demonstrated support for the project by local community organizations and individuals other than as project sponsors, such as through the commitment by such organizations and individuals of funds, goods and services, and volunteer labor.

(4) *Community stability—10-point category.* An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project(s) maximize(s) community stability, such as by: committing to a greater long-term period pursuant to § 960.5; revitalizing vacant or abandoned properties or being integrally part of a neighborhood stabilization plan, if such revitalization or stabilization is not identified as a special needs category by the Bank pursuant to § 960.10(d)(3)(iii); and not displacing low- or moderate-income households, or if such displacement will occur, indicating how such households will be assisted to minimize the impact of such displacement.

(5) *Innovation—5-point category.* An application can receive a maximum of 5 points for this category. The Bank shall award points to applications based on the extent to which the project(s) involve(s) a particularly new or unusual approach, either financial or non-financial, for meeting the requirements of this part.

**§ 960.11 Modifications of approved AHP applications.**

(a) An applicant that seeks a modification of an approved AHP application before completion and occupancy of the project must submit a request for such modification in writing to the Bank for review and approval. A modification is any change that affects or could potentially affect the material facts under which the application was originally evaluated and scored.

(b) A request for a modification of an approved AHP application must include, at a minimum:

(1) A description of how the proposed modification differs from the original application;

(2) The reason for the proposed modification; and

(3) Any other information that the Bank determines is necessary to review the proposed modification.

(c)(1) The Bank shall review the request for modification, shall re-score the application as proposed to be modified according to the scoring criteria used in the AHP funding cycle in which the application was originally approved, and may approve such request if the following factors are satisfied:

(i) The project as proposed to be modified continues to meet all of the requirements of this part; and

(ii) The project as proposed to be modified continues to score high enough that it would have been approved in its AHP funding cycle.

(2) If the application does not satisfy the requirements in paragraph (c)(1) of this section, the Bank in its discretion may approve the request for modification if the reason for the modification is due to circumstances outside the control of the applicant or sponsor.

(d) The Bank shall forward to the Board a detailed summary of any modification of an AHP application approved by the Bank, including how the Bank re-scored the project, within 30 calendar days of the approval of such modification.

## Subpart F—Use and Verification at Initial Disbursement of AHP Subsidized Advances or Direct Subsidies

**§ 960.12 Use of AHP subsidized advances or direct subsidies within reasonable period of time and verification of reasonable progress.**

(a) The Bank shall in its AHP implementation plan identify what constitutes reasonable progress by the sponsor towards using subsidized advances or direct subsidies within a reasonable period of time after the approval of an AHP application for different types of projects, and explain how it intends to verify such reasonable progress.

(b) The sponsor must demonstrate that reasonable progress is being made towards using the requested funds within a reasonable period of time after approval of the AHP application, as determined by the Bank under paragraph (a) of this section.

(c) The Bank shall verify the efforts of the sponsor to determine whether it has satisfied the requirement in paragraph (b) of this section.

(d) If the sponsor fails to satisfy the requirement in paragraph (b) of this section, the Bank shall cancel the AHP award, and shall not disburse any subsidized advances or direct subsidies through the applicant to the sponsor, and the full amount of any previously disbursed subsidized advances or direct subsidies shall be returned to the Bank.

**§ 960.13 Verification at initial disbursement of AHP subsidized advances or direct subsidies.**

At the time of initial disbursement of a subsidized advance or a direct subsidy by a Bank for an approved AHP application, the Bank shall verify in writing that the project complies with all applicable requirements contained in § 960.9 and all obligations committed to in the approved AHP application. The Bank shall verify the amount of subsidy being provided in connection with the application and being charged against the AHP fund. The Bank shall include in its AHP implementation plan its verification procedures for such purposes.

## Subpart G—Monitoring and Reporting Requirements

**§ 960.14 Monitoring requirements.**

(a) *Monitoring by the Banks.* Each Bank has the responsibility to monitor the projects funded through its AHP according to the monitoring requirements described in this section.

(b) *Monitoring plan.* Each Bank shall include in its AHP implementation plan

an explanation of how it intends to meet the monitoring requirements of this section.

(c) *Monitoring by Bank's designee.* A Bank may contract with an applicant, a state housing finance agency, or other entity to perform the tasks required to meet the monitoring requirements described in paragraphs (e) through (h) of this section; however, the Bank remains ultimately responsible for compliance with the monitoring requirements of this section.

(d) *Monitoring during construction or rehabilitation.* If subsidized advances or direct subsidies are used to finance construction or rehabilitation of a project, the Bank shall require the applicant to monitor the construction or rehabilitation until completion, and to make progress reports to the Bank, as required under § 960.15(b)(2).

(e) *Monitoring long-term requirements.*—(1) *Owner-occupied housing.*—(i) *Initial certification.* At the time a household enters into a purchase contract for an AHP-assisted housing unit or at the closing on the financing for such unit, or at the time a household that already owns a housing unit receives a commitment of a loan or a grant pursuant to the AHP, the Bank or its designee shall obtain a certification from the sponsor, as required under § 960.15(c)(1)(i), that the household has an income at or below the level committed to in the AHP application.

(ii) *Monitoring after initial sale.* (A) During the required long-term period applicable to an owner-occupied housing unit assisted by a grant provided under the AHP, the Bank or its designee shall monitor the unit to determine whether it has been sold to a household with an income that exceeds the level committed to in the AHP application.

(B) Monitoring shall include, but is not limited to, periodic review of relevant reports or certifications obtained from the sponsor, including reports and certifications received pursuant to § 960.15(c)(1)(ii) and, at least on a sample basis, periodic review of land title records at intervals to be determined by the Bank, based on the amount of funds received by the project pursuant to the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank.

(2) *Rental housing.*—(i) *Restriction on transfer.* The Bank shall require an AHP-assisted rental housing project to be subject to a deed restriction or other legally enforceable mechanism which requires that upon sale of the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, the Bank or its designee receives notice of the sale, and:

(A) The project's rental units, or portion thereof, must continue to be affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and the purchaser agrees to be subject to the same restrictions on resale that applied to the seller; or

(B) If the purchaser does not satisfy the requirements in paragraph (e)(2)(i)(A) of this section, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay the grant as provided in § 960.16(d)(1); or

(C) If the purchaser does not satisfy the requirements in paragraph (e)(2)(i)(A) of this section, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

(ii) *Initial certification.* Upon initial full occupancy of the units in an AHP-assisted rental housing project, or one year after initial disbursement of the subsidized advance or direct subsidy, whichever occurs first, the Bank or its designee shall obtain a certification from the sponsor or the owner, as required under § 960.15(c)(2), that the project's units, or portion thereof, are affordable for and occupied by households with incomes at initial occupancy at or below the levels committed to in the AHP application.

(iii) *Monitoring after initial occupancy.* (A) During the long-term period for which the units, or portion thereof, of an AHP-assisted rental housing project must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, the Bank or its designee shall monitor the project to determine whether the project's units, or portion thereof, remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application.

(B) Monitoring shall include, but is not limited to, periodic review of relevant household income and rent reports or certifications obtained from the sponsor or the owner, including certifications received pursuant to § 960.15(c)(2) and, at least on a sample basis, periodic inspections of the project at intervals to be determined by the Bank, based on the amount of funds received by the project pursuant to the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank.

(f) *Monitoring compliance with the special needs priority.* If an applicant in its AHP application commits to fund a housing project that will address a special need pursuant to § 960.10(d)(3), either through providing units for persons with a special need, or through providing a special service for occupants, as defined in the Banks AHP implementation plan:

(1) The Bank or its designee shall obtain a certification from the sponsor or owner upon completion and occupancy of the project, as required under § 960.15(c)(3), that the project's units, or portion thereof, are occupied by persons with such special need, as committed to in the AHP application, or that a special service is being provided, as committed to in the AHP application; and

(2) In the case of a special service being provided pursuant to § 960.10(d)(3), the Bank or its designee shall monitor the project, as determined by the Bank in its AHP implementation plan, for at least one year from the date of initial full occupancy of the project, to verify that such special service continues to be provided to the households, as committed to in the AHP application.

(g) *Monitoring compliance with the District Bank priority or priorities.* (1) If an applicant in its AHP application commits to fund a project that meets a District Bank priority or priorities established by the Bank pursuant to § 960.10(d)(4), the Bank or its designee shall monitor the project to verify that it continues to meet the Bank priority or priorities.

(2) The Bank shall set forth in its AHP implementation plan the nature, frequency and duration for monitoring compliance with the District Bank priority or priorities.

(h) *Monitoring compliance with the economic mobility priority.* If an applicant in its AHP application commits to fund a project that meets the requirements of § 960.10(d)(5), the Bank or its designee shall obtain a certification from the sponsor or the owner upon completion and full occupancy of the project, as required under § 960.15(c)(4), that the sponsor or the owner has met such requirements as committed to in the AHP application.

**§ 960.15 Reporting requirements.**

(a) *Reporting by the Banks.* Each Bank shall provide accurate and timely

reports and documentation to, and in the format requested by, the Board concerning the Bank's AHP, as the Board may from time to time require.

(b) *Reporting by applicants.* (1) Each Bank shall require an applicant receiving a subsidized advance or direct subsidy pursuant to this part to report at least annually to the Bank on the manner in which it has used the funds, with such reports continuing until the funds have been fully disbursed by the applicant.

(2) If subsidized advances or direct subsidies are used to finance construction or rehabilitation of a project, the Bank shall require the applicant to report to the Bank at reasonable intervals determined by the Bank, and described in the Bank's AHP implementation plan, on the progress of the construction or rehabilitation until completion.

(c) *Reporting by the sponsor or owner.*—(1) *Owner-occupied housing units*—(i) *Initial certification.* Where a subsidized advance or direct subsidy is used to finance the purchase of an owner-occupied housing unit, the Bank shall require the sponsor to certify, at the time a household enters into a purchase contract for such unit or at the closing on the financing for such unit, that the unit has been sold to a household with an income at or below the level committed to in the AHP application. Where a subsidized advance or direct subsidy is used to finance the rehabilitation of an owner-occupied housing unit, the Bank shall require the sponsor to certify at the time a loan or grant is committed to fund such rehabilitation that the household that owns and occupies the unit has an income at or below the level committed to in the AHP application.

(ii) *Reports of subsequent sale.* If an owner-occupied housing unit assisted by a grant provided under the AHP is not subject to a deed restriction or other legally enforceable mechanism restricting transfer of ownership to a household with an income at or below the level committed to in the AHP application, the Bank shall require the sponsor to report to the Bank or its designee, at least annually for the required long-term period, the number of any such units that are sold to households whose incomes exceed the level committed to in the AHP application, and to certify to the Bank that it is continuing to satisfy its commitment, pursuant to its legally binding agreement with the Bank.

(2) *Rental housing units—certification.* The Bank shall require the sponsor or owner to certify, upon initial full occupancy of the units in an AHP-assisted rental housing project but no later than one year after initial disbursement of the subsidized advance or direct subsidy, and annually thereafter, that the project's units, or portion thereof, are affordable for and occupied by households with incomes at or below the levels committed to in the AHP application.

(3) *Special needs—initial certification.* If an applicant in its AHP application commits to fund a housing project that will provide housing units for persons with a special need, or will provide a continuing special service to occupants pursuant to § 960.10(d)(3), the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the project's units, or portion thereof, are occupied by persons with such special needs or that a special service is being provided to occupants, as committed to in the AHP application.

(4) *Economic mobility—certification.* If an applicant in its AHP application commits to fund a housing project that meets the requirements for economic mobility under § 960.10(d)(5), the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the sponsor or owner has met such requirements, as committed to in the AHP application.

(d) *Other reports.* The Bank shall require applicants or sponsors to provide such other reports as the Bank deems necessary in order to fulfill its monitoring obligations under § 960.14.

## Subpart H—Corrective and Remedial Actions for Fraud or Non-Compliance With AHP Requirements

### § 960.16 Corrective and remedial actions for fraud or non-compliance.

(a) *Fraud or willful non-compliance.* (1) In the event of an applicant's, sponsor's or owner's fraud with respect to the requirements of this part, the Bank shall exclude the applicant, sponsor or owner, respectively, on a permanent basis, from future participation in the AHP. In the event of an applicant's, sponsor's or owner's willful non-compliance with the requirements of this part, the Bank shall suspend the applicant, sponsor or owner, respectively, at least on a temporary basis, from future participation in the AHP during the period such willful non-compliance continues, and may exclude such party permanently from future participation in the AHP.

(2) In the event of an applicant's fraud or willful non-compliance with respect to the requirements of this part, the Bank shall recover from the applicant the full amount of the AHP subsidy provided to the project.

(3)(i) In the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part, the full amount of the AHP subsidy shall be recovered from the sponsor or owner by the applicant and returned to the Bank or, if previously agreed to by the Bank, shall be recovered by the Bank from the sponsor or owner. If efforts to recover the AHP subsidy from the sponsor or owner are unsuccessful, the applicant shall not be liable for such funds.

(ii) The applicant shall have in place either:

(A) A legally binding agreement or other legally enforceable mechanism that permits it to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part; or

(B) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the sponsor or owner and the applicant that permits the Bank to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part.

(4) The Board in its discretion may grant a waiver of any required remedial actions under this paragraph (a) upon written request by the Bank, applicant, sponsor or owner.

(b) *Other types of non-compliance.* In the event of an applicant's, sponsor's or owner's non-compliance with the requirements of this part that is not willful, such as due to inadvertent errors by such party or changes in circumstances that are outside such party's control, the Bank shall provide the party a reasonable period of time in which to take reasonable efforts, pursuant to a compliance plan approved by the Bank, to remedy the non-compliance. The Bank in its discretion may exclude the applicant, sponsor or owner from participation in the AHP while such party is under a compliance plan, or in its discretion may require the applicant to increase the long-term period committed to in its AHP application for the project by the amount of time the project has been in non-compliance. If the applicant, sponsor or owner takes no reasonable efforts to comply with the compliance plan, then such party is in willful non-compliance with the requirements of this part and is subject to the remedial actions contained in paragraph (a) of

this section. If the applicant, sponsor or owner takes reasonable efforts pursuant to the compliance plan to remedy the non-compliance under this paragraph (b) and such efforts are unsuccessful, the applicant, sponsor or owner would be subject to the remedial actions contained in paragraph (a) of this section, but may apply to the Bank for a waiver of any such required remedial actions. The Bank shall report to the Board in writing on any waivers approved pursuant to this paragraph (b) within 30 calendar days of such approval.

(c) *Sale of AHP-assisted owner-occupied housing unit to income-ineligible household.* Except as provided in paragraph (c)(3) of this section, in the event that a household sells its AHP-assisted owner-occupied housing unit to a household whose income exceeds the level committed to in the AHP application prior to the end of the required long-term period, then the provisions of either paragraph (c)(1) or (2) of this section shall apply.

(1) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller, reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the unit after deduction for sales expenses, and to be returned to the Bank, except that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan.

(2) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, the applicant shall either repay to the Bank that portion of the advance used to make the loan to the seller or the Bank shall convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller shall be made available by the Bank for additional AHP projects.

(3) The requirements of paragraphs (c)(1) and (2) of this section shall not apply provided the sponsor, pursuant to a legally binding agreement with the Bank, assists another household with an income at or below the level committed to in the AHP application in the manner originally committed to in the AHP application.

(d) *Sale of AHP-assisted rental housing project.* In the event that the owner of an AHP-assisted rental housing project sells the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, and the purchaser does not agree to maintain the project according to such commitments and to be subject to the same restrictions on resale that applied to the seller, then the provisions of either paragraph (d)(1) or (2) of this section shall apply.

(1) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller, reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the project after deduction for sales expenses, and to be returned to the Bank, except that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan; or

(2) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, the applicant shall either repay the advance to the Bank or the Bank shall convert the advance to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize the advance shall be made available by the Bank for additional AHP projects.

## Subpart I—AHP Applications Involving Loan Funds and Loan Consortia

### § 960.17 AHP applications involving loan funds and loan consortia.

(a) *General.* (1) An applicant may use a subsidized advance or a direct subsidy to make a loan or a grant to a loan fund or loan consortium as provided in paragraph (c) of this section.

(2) AHP applications involving the use of loans or grants by loan funds or loan consortia pursuant to the AHP are governed by the provisions of this part, except as otherwise provided in this section.

(b) *AHP application approval requirements.* The requirements for approval of an AHP application that proposes to use subsidized advances or direct subsidies to make a loan or a grant to a loan fund or a loan consortium are governed by the provisions of § 960.8, except that:

(1) The application will be scored on the criteria that the loan fund or loan consortium proposes to use to select projects that will ultimately receive a loan or grant from the loan fund or loan consortium that is subsidized by the AHP; and

(2) The Bank shall review and shall require the applicant to review each new rental housing project funded by a loan fund or loan consortium prior to disbursing the loan or grant to ensure that:

(i) The project meets the threshold requirements of § 960.9; and

(ii) The project meets the criteria committed to in the approved AHP application.

(c) *Use of funds.*—(1) *Subsidized advances.* If an applicant receives a subsidized advance and uses the proceeds of the advance to make a loan to a loan fund or loan consortium, the loan fund or loan consortium shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus a reasonable interest rate spread approved by the Bank. The applicant and the loan fund or loan consortium may determine between themselves what proportion of the interest rate spread the applicant and the loan fund or loan consortium will share.

(2) *Direct subsidies.* (i) If an applicant receives a direct subsidy from a Bank and in turn provides a grant to a loan fund or loan consortium, the loan fund or loan consortium must either:

(A) Pass the entire grant on to the recipient;

(B) Use the entire grant to lower the interest rate on a loan to the borrower; or

(C) Lend the entire grant to the borrower to finance a rental housing project for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such loan is repaid before the end of the 30-year term, the entire amount of the grant must be repaid to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects.

(ii) If a loan fund or loan consortium provides both a loan and a grant to a borrower and the loan fund or loan consortium charges an origination fee for providing the loan, then any fee charged by the loan fund or loan consortium for providing the grant may not be paid with AHP subsidized advances or direct subsidies.

(iii) *Calculation of interest rate.* When a loan fund or loan consortium receives a grant from an applicant pursuant to

the AHP and uses the grant to lower the interest rate on a loan to the borrower, the interest rate calculation must be consistent with the procedure used by the Bank for calculating the amount of AHP subsidy needed for a subsidized advance, taking into account the source of funds used by the loan fund or loan consortium for its loans and the rate that normally would be charged for a loan of the type and term that is provided to the borrower.

(3) *Interest or other income earned on loans or grants.* If an applicant receives a subsidized advance or direct subsidy from a Bank and in turn provides a loan or grant to a loan fund or loan consortium, any interest or other income earned by the loan fund or loan consortium on such funds, not including any approved fee or interest rate spread charged to the borrower, either:

(i) Must be used by the loan fund or loan consortium to provide funds for additional projects meeting the threshold requirements in § 960.9 and the criteria committed to in the approved AHP application; or

(ii) Must be forwarded to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects.

(4) *Loans or grants from multiple AHP funding cycles.* If loans or grants received by a loan fund or loan consortium pursuant to one AHP funding cycle are combined with loans or grants received by such entity pursuant to another AHP funding cycle in a single rental housing project, the loan fund or loan consortium shall require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria. The requirement does not apply when loans or grants received by a loan fund or loan consortium pursuant to separate AHP funding cycles are combined to finance a single owner-occupied housing project; however, the loan fund or loan consortium in its discretion may require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria.

(5) *Using repayments of loans within reasonable period of time.* Any loans provided by a loan fund or loan consortium pursuant to the AHP that are repaid to such entity must be re-lent or provided as grants by such entity within a reasonable period of time after such repayments, or must be repaid to the applicant, which in turn must repay such funds to the Bank, and must be made available by the Bank for additional AHP projects. The Bank shall in its AHP implementation plan identify what constitutes a reasonable period of time for such purposes.

(d) *Monitoring and reporting*—(1) *General.* Where loans or grants are provided by an applicant pursuant to the AHP to a loan fund or loan consortium which uses the funds to finance owner-occupied or rental housing units, the Bank shall:

(i) Monitor such units according to the monitoring requirements of § 960.14(e) through (h);

(ii) Require the sponsor or owner of a project receiving loans or grants from the loan fund or loan consortium to submit such reports and certifications to the Bank as are required under § 960.15(c); and

(iii) Require the loan fund or loan consortium to report to the Bank any new loan or grant made using the repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

(2) *Exceptions.* (i) The Bank may contract with the applicant to meet the monitoring requirements of § 960.14 (e) through (h), in which case the applicant shall:

(A) Monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14 (e) through (h);

(B) Require the sponsor or owner of the project to submit to the applicant such reports and certifications as are required under § 960.15(c); and

(C) Require the loan fund or loan consortium to report to the applicant any new loan or grant made using the repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

(ii) The Bank may contract with the loan fund or loan consortium to meet the monitoring requirements of § 960.14 (e) through (h), in which case the loan fund or loan consortium shall:

(A) Monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14 (e) through (h);

(B) Require the sponsor or owner of the project to submit to the loan fund or loan consortium such reports and certifications as are required under § 960.15(c); and

(C) Report to the Bank any new loan or grant made using the repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

(e) *Corrective and remedial actions for fraud or non-compliance with AHP requirements.* (1) A loan fund or loan consortium receiving loans or grants from an applicant pursuant to the AHP and the project sponsors or owners receiving loans or grants from a loan fund or loan consortium are subject to the corrective and remedial actions contained in § 960.16 for fraud and non-compliance with respect to the requirements of this part.

(2)(i) In the event of a loan fund's or loan consortium's fraud or willful non-compliance with respect to the requirements of this part, the full amount of the AHP subsidy shall be recovered from the loan fund or loan consortium by the applicant and returned to the Bank or, if previously agreed to by the Bank, shall be recovered by the Bank from the loan fund or loan consortium.

(ii) An applicant that provides loans or grants to a loan fund or loan consortium pursuant to the AHP shall have in place either:

(A) A legally binding agreement or other legally enforceable mechanism that permits it to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the requirements of this part, the full amount of the AHP subsidy; or

(B) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the applicant and the loan fund or loan consortium that permits the Bank to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the requirements of this part, the full amount of the AHP subsidy.

(3)(i) In the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part, the full amount the AHP subsidy shall be recovered by the loan fund or loan consortium from the sponsor or owner, to be used for additional AHP projects.

(ii)(A) The loan fund or loan consortium shall have in place a legally binding agreement or other legally enforceable mechanism that permits it to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part, and the applicant shall have in place a legally binding agreement or other legally enforceable mechanism that permits it

to recover from the loan fund or loan consortium such amount recovered by the loan fund or loan consortium from the sponsor or owner; or

(B) The applicant shall have in place, if the Bank agrees and such agreement is legally enforceable, a four-party agreement that includes the Bank, the applicant, the loan fund or loan consortium and the sponsor or owner, that permits the Bank to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part.

(4) The Board in its discretion may grant a waiver of any required remedial actions under this paragraph (e) for fraud or willful non-compliance with respect to the requirements of this part, upon written request by the Bank, applicant, loan fund or loan consortium, sponsor or owner.

## Subpart J—Required AHP Contributions

### §960.18 Required annual AHP contributions.

Each Bank shall fund its AHP in accordance with the following formula:

(a) In 1994, the greater of:

(1) 6 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $75 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

(b) In 1995 and each year thereafter, the greater of:

(1) 10 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

### §960.19 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension.* (1) If a Bank finds that the contributions required pursuant to §960.18 are contributing to the financial instability of the Bank, the Bank shall notify the Board promptly, and may apply in writing to the Board for a temporary suspension of such contributions.

(2) A Bank's application for a temporary suspension of contributions shall:

(i) State the period of time for which the Bank seeks a suspension;

(ii) State the grounds for a suspension;

(iii) Include a plan for returning the Bank to a financially stable position; and

(iv) Be accompanied by the Bank's preceding year's annual financial report, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Board to consider.

(b) *Board review of application for temporary suspension.*—(1) *Grounds for approval of application.* In reviewing a Bank's application for a temporary suspension of contributions to determine the Bank's financial instability, the Board shall consider the following factors:

(i) Whether the Bank's earnings are severely depressed. The Board shall consider the extent to which the Bank's quarterly or annual net earnings have decreased from the preceding quarter or year, and whether such decline is projected to continue;

(ii) Whether there has been a substantial decline in the Bank's membership capital. The Board shall consider the extent to which the Bank's paid-in membership capital has declined in any given quarter or year, and whether such decline is projected to continue;

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding. The Board shall consider the extent to which the Bank's level of advances has declined in any given quarter or year, and whether such decline is projected to continue; and

(iv) Whether any other financial condition exists with respect to the Bank which has resulted in, or is likely to result in, the financial instability of the Bank.

(2) *Limitations on grounds for approval of application.* The Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances (other than subsidized advances) to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Board decision.* The Board shall approve or disapprove a Bank's application for a temporary suspension within 30 calendar days of receipt of such application, and the Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. A copy of the Board's decision shall be forwarded to each of the Banks.

(d) *Board approval of application for temporary suspension.* (1) If the Board approves a Bank's application for a temporary suspension, the Board's written decision shall specify the period of time such suspension shall remain in effect.

(2) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of the Bank, and the Board shall continue to monitor the Bank's financial condition.

(3) If, prior to the conclusion of the temporary suspension period, the Board determines that the Bank has returned to a position of financial stability, the Board may, upon written notice to the Bank, terminate the temporary suspension. .

(e) *Application for extension of temporary suspension period.* (1) If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

(2) The Board shall approve or disapprove a Bank's application for an extension of a temporary suspension period within 30 calendar days of receipt of such application.

(3) The Board's decision on an application for an extension of a temporary suspension period shall be in writing, shall be accompanied by specific findings and reasons for such action, and shall state the effective date and time period if an extension is approved.

(f) *Notice to Congress.* (1) The Board shall notify 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 not less than 60 calendar days before any temporary suspension (or extension of such suspension) approved pursuant to this section takes effect.

(2) A temporary suspension (or extension of such suspension) shall become effective as determined by the Board, unless a joint resolution of Congress is enacted disapproving such suspension (or extension thereof).

## Subpart K—Affordable Housing Reserve Fund

### §960.20 Affordable Housing Reserve Fund.

(a) If a Bank fails to use or commit the full amount it is required to contribute to the AHP in any year pursuant to

§ 960.18, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Board. The 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. A Bank is deemed to have used or committed its required contribution where amounts are remaining at the end of the year because funding the next highest ranking project would exceed the Bank's required AHP contribution for the year. Such amounts remaining shall be combined with returned AHP funds to fund the next highest scoring AHP project or projects, or carried over by the Bank to the next year's AHP funding cycles.

(b) By January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) By January 31 of each year, the Board will notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

## Subpart L—Advisory Councils

### § 960.21 Advisory Councils.

(a) *Appointment.* (1) Each Bank shall appoint an Advisory Council of seven to 15 persons, as provided in the Bank's AHP implementation plan. Advisory Council members shall reside in the Bank's district and shall be drawn from community and nonprofit organizations actively involved in providing or promoting low- or moderate-income housing in the Bank's District.

(2) The Bank shall actively solicit nominations from Bank members and community and nonprofit organizations actively involved in providing or promoting low- or moderate-income housing in the Bank's District, and shall allow sufficient time for such organizations to respond, so that the nomination and appointment process is as broad and as participatory as possible.

(3) Advisory Council members shall be appointed by the Banks giving consideration to the size of the District and the diversity of low-income housing needs within the District.

(4) Advisory Council members shall serve for terms of two or three years, and such terms shall be staggered to provide continuity and experience in service, as provided in the Bank's AHP implementation plan. An Advisory Council member may not serve for more than six years consecutively.

(5) An Advisory Council member who, subsequent to appointment, is no longer employed by or associated with a community or nonprofit organization actively involved in providing or promoting low- or moderate-income housing in the Bank's District, may continue to serve on the Advisory Council until the end of his or her term.

(b) *Election of chairperson and vice chairperson.* Each Advisory Council shall elect from among its voting members a chairperson and a vice chairperson.

(c) *Designation of secretary.* Each Advisory Council shall designate a member, or request that a member of the Bank's staff be designated, to act as secretary of the Advisory Council. The secretary shall record and maintain minutes of the meetings of the Advisory Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(d) *Review of Bank's proposed AHP implementation plan and prior AHP applications.* (1) Prior to approval of the Bank's proposed AHP implementation plan by the Bank's board of directors, the Bank's Advisory Council shall review the proposed AHP implementation plan and provide its recommendations to the Bank's board of directors pursuant to the requirements in § 960.2(c).

(2) Upon request of the Advisory Council, the Bank shall provide the Advisory Council with copies of any AHP applications from prior AHP funding cycles.

(e) *Meetings with the Banks.* The Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on low- and moderate-income housing programs and needs in the Bank's District and on the utilization of AHP subsidized advances or direct subsidies for these purposes.

(f) *Report to the Board.* Each Advisory Council shall submit to the Board annually by March 1 its analysis of the low-income housing activity of its Bank.

(g) *Payment of expenses and compensation.—(1) Expenses.* Each Bank shall reimburse members of its Advisory Council for transportation and subsistence expenses they incur for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank.

(2) *Fees.* Each Bank shall pay members of its Advisory Council a fee for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank.

## Subpart M—Effective Dates

### § 960.22 Effective dates.

This part shall become effective [30 days after publication of the final rule in the **Federal Register**]. The provisions of this part, or portion thereof, may be applied to projects approved for AHP funding prior to [30 days after publication of the final rule in the **Federal Register**] to the extent all relevant parties [the Bank, the applicant, the sponsor or the owner, and if applicable, the loan fund or loan consortium] agree thereto in writing.

Dated: December 15, 1993.

By the Federal Housing Finance Board.

**Philip L. Conover,**

*Managing Director.*

[FR Doc. 94–412 Filed 1–7–94; 8:45 am]

BILLING CODE 6725–01–U

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## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 121

## Small Business Size Standards; Waiver of the Nonmanufacturer Rule

**AGENCY:** Small Business Administration.

**ACTION:** Notice of intent to terminate waivers of the Nonmanufacturer Rule for several classes of metal products.

**SUMMARY:** The Small Business Administration (SBA) intends to terminate existing waivers of the Nonmanufacturer Rule for: (1) Bars and rods, high nickel alloy; (2) plate sheet, strip and foil, stainless steel and high nickel alloy; (3) wire, nonelectrical, high nickel alloy; (4) bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass; (5) plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper; (6) sheet and plate aluminum products; and (7) structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy. SBA's intent to terminate these waivers of the Nonmanufacturer Rule is based on our recent discovery of small business manufacturers for these classes of products. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business

manufacturers or processors on such contracts.

**DATES:** Comments must be received on or before February 9, 1994.

**ADDRESSES:** Written comments should be addressed to Mr. Robert J. Moffitt, Associate Administrator for Procurement Assistance, U.S. Small Business Administration, Mail Code 6250, 409 3rd Street SW., Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** James Parker, Procurement Analyst, phone (703) 695–2435.

**SUPPLEMENTARY INFORMATION:** Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurements must provide the products of small business manufacturers or processors. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 210 of Public Law 101–574 further amended the law to allow for waivers for classes of products for which there are no small business manufacturers or processors "available to participate in the Federal procurement market." The actions which the SBA is proposing to take with respect to existing waivers and the reasons for those actions follow:

1. SBA announced its decision to grant the waiver of the Nonmanufacturer Rule for bars and rods, high nickel alloy, in the **Federal Register** on May 15, 1991, p. 22306. Recently, while researching SBA's Procurement Automated Source System (PASS) on a related issue, SBA became aware of the existence of small business manufacturers for items within this class of product. For this reason, SBA intends to terminate the waiver previously granted for bars and rods, high nickel alloy, identified under Product and Service Code (PSC) 9510 and Standard Industrial Classification (SIC) Code 3312.

2. The SBA announced its decision to grant the waiver for plate, sheet, strip and foil, stainless steel and high nickel alloy in the **Federal Register** on May 15, 1991, p. 22306. While researching the PASS on a related issue, SBA became aware of the existence of a small business manufacturer for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for plate, sheet, strip and foil, stainless steel and high nickel alloy identified under Product and Service Code (PSC) 9515 and Standard Industrial Classification (SIC) Code 3312.

3. SBA announced its decision to grant a class waiver for wire, nonelectrical, high nickel alloy, in the **Federal Register** on May 15, 1991, p. 22306. While researching the PASS on a related issue, SBA became aware of the existence of a small business manufacturer for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for wire, nonelectrical, high nickel alloy, identified under Product and Service Code (PSC) 9525 and Standard Industrial Classification (SIC) Code 3356.

4. SBA announced its decision to grant a class waiver for bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass in the **Federal Register** on May 15, 1991, p. 22306. The Defense Industrial Supply Center recently brought to SBA's attention the existence of a small business manufacturer for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass identified under Product and Service Code (PSC) 9530 and Standard Industrial Classification (SIC) Code 3356.

5. SBA announced its decision to grant the waiver for plate, sheet and strip, titanium, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper in the **Federal Register** on August 23, 1991, p. 41787. SBA announced its decision to exclude titanium bars, rods, plates, sheets and strips from this class waiver in the **Federal Register** on April 30, 1992, p. 18396. The remaining class waiver included plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper. While researching the PASS on a related issue, SBA became aware of the existence of a small business manufacturer for items within the class of products of plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper. For this reason, SBA intends to terminate the waiver previously granted for plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper identified under Product and Service Code (PSC) 9535 and Standard Industrial Classification (SIC) Code 3353.

6. SBA announced its intent to grant the waiver for sheet and plate aluminum products in the **Federal Register** on July 13, 1991, p. 28772. It was recently brought to SBA's attention by the Defense Industrial Supply Center that a small business manufacturer exists for items within this class of products. For this reason, SBA intends to terminate the waiver for sheet and plate aluminum products identified under Product and Service Code (PSC) 9535 and Standard Industrial Classification (SIC) Code 3353.

7. SBA announced its decision to grant the waiver for structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy in the **Federal Register** on May 15, 1991, p. 22306. It was recently brought to SBA's attention by the Defense Industrial Supply Center that a small business manufacturer exists for items within this class of products. For this reason, SBA intends to terminate the waiver for structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy identified under Product and Service Code (PSC) 9540 and Standard Industrial Classification (SIC) Code 3354.

In summary, based on the above information, the SBA proposes to terminate the class waivers of the Nonmanufacturer Rule for:

1. Bars and rods, high nickel alloy, PSC 9510, SIC 3312;
2. Plate, sheet, strip and foil, stainless steel and high nickel alloy, PSC 9515, SIC 3312;
3. Wire, nonelectrical, high nickel alloy, PSC 9525, SIC 3356;
4. Bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass, PSC 9530, SIC 3356;
5. Plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper, PSC 9535, SIC 3353;
6. Sheet and plate aluminum products, PSC 9535, SIC 3353; and
7. Structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy, PSC 9540, SIC 3354.

The public is invited to comment to SBA on its proposed termination of the waivers for the classes of products specified. All comments by the public will be duly considered by SBA in determining whether to finalize its intent to terminate these waivers.

Dated: December 27, 1993.

**Robert J. Moffitt,**

*Associate Administrator for Procurement Assistance.*

[FR Doc. 94–474 Filed 1–7–94; 8:45 am]

BILLING CODE 8025–01–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Chapter I**

**[Docket No. 27581, Notice No. 94–1]**

## Regulatory Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for comments.

**SUMMARY:** This notice requests that the public identify regulations that it believes should be amended or eliminated to reduce undue regulatory burdens, if any, consistent with the FAA's statutory safety, security, and other public interest responsibilities. This notice asks each commenter to identify, in order of priority, those regulations that are believed to be unwarranted or inappropriate. In order to focus agency consideration, each commenter is asked to concentrate on no more than three regulations he or she believes to be of primary concern. The agency asks further that each commenter provide a brief explanation of: (1) The bases for the three highest priority recommendations to amend or eliminate the regulations; (2) the ways in which each regulation's objective is otherwise fulfilled (*e.g.*, by duplicative regulations or by technological advances that render the regulations obsolete); and (3) where appropriate, a suggested substitute or amended version of the regulations identified. This information will help the FAA to respond to the Administration's direction to design regulations in the most effective manner to achieve their regulatory objective.

**DATES:** Comments should be submitted on or before March 11, 1994.

**ADDRESSES:** Comments should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27581, 800 Independence Avenue, SW., Washington, DC 20591.

Comments delivered must be marked Docket No. 27581. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chris Christie, Director, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677.

**SUPPLEMENTARY INFORMATION:** With this Notice, the FAA is undertaking an evaluation aimed at eliminating or amending existing rules and regulations that may not be necessary to achieve the agency's safety, security, and other public interest responsibilities. This effort initiates a response to the recommendations of the 15-member National Commission to Ensure a Strong Competitive Airline Industry, the recommendations of the Vice President's National Performance Review, and DOT and FAA regulatory initiatives.

In April 1993, the National Commission to Ensure a Strong Competitive Airline Industry (Commission) was established by Public Law No. 103–13. The Commission was asked to investigate, study and make policy recommendations regarding the financial vitality and future competitiveness of the U.S. airline and aerospace industries.

In August 1993, the Commission issued a report to the President and Congress that addressed, among other things, the legal and administrative policies that govern the regulatory responsibilities imposed on United States airlines. The Commission found that Federal regulations impose a cumulative burden on airlines. While the FAA has not quantified that burden, the Commission estimated that existing rules have added to airline costs and concluded that the costs of these rules have a direct impact on the airlines' financial condition.

To enhance the FAA's ability to perform its statutory role without undue economic impact on the aviation industry, the Commission recommends that the "FAA/DOT undertake a short-range regulatory review—in close consultation with industry and other interested parties—to eliminate or amend existing regulations to reduce regulatory burdens consistent with safety and security considerations."

In addition, Executive Order 12866 requires that agencies "identify regulations that are cumulative, obsolete, or inconsistent, and where appropriate, eliminate or modify them." In light of these concerns, and consistent with the Administration's Civil Aviation Initiative, this notice solicits public comment that will assist the FAA in focusing attention on areas where the public believes the regulatory burden is excessive and unjustified. In particular, the agency requests that each commenter identify the most significant regulations that the commenter believes may no longer be necessary, are unduly burdensome, or impose excessive costs or red tape. In some cases, for example, important innovations, technologies, or new market opportunities may have taken place or may have been created since a rule was promulgated, potentially rendering a rule obsolete.

The FAA requests commenters to focus their recommendations on up to three regulations they believe to be of primary concern—rather than catalogue all rules that they may view to be objectionable in some respect. This will facilitate development of a manageable overall proposal. Further, each commenter should rank *in priority order* the regulations that the commenter believes the agency should address first. In addition, each submission should include an explanation of: (1) How the identified regulatory requirement is burdensome; (2) how the requirement should be changed or deleted, including, where possible, suggested draft substitutes; (3) how a regulatory change would benefit the public; and (4) how a proposed regulatory change would provide an adequate level of safety, security, or environmental protection. Specific economic information to support a reliable cost/benefit analysis of the proposed change will also be of assistance.

Comments in response to this notice are also expected to facilitate the FAA's regulatory review envisioned by Executive Order No. 12866, "Regulatory Planning and Review," issued September 30, 1993. This executive order requires each agency to create a program under which it will periodically review its existing significant regulations to determine whether any should be modified or eliminated to make the agency's regulatory program more effective and less burdensome.

The comments provided in response to this notice will assist the agency in establishing its priorities for future regulatory changes, including repeal or modification of rules where appropriate, to maintain safety and security while reducing regulatory burdens.

Issued in Washington, DC, on January 5, 1994.

**David R. Hinson,**

*Administrator.*

[FR Doc. 94–544 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 0960–AD45

## Organization and Procedures; Procedures of the Office of Hearings and Appeals; Authority of Appeals Officers to Deny a Request for Appeals Council Review

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 20 CFR 422.205, which describes the organization and procedures of the Appeals Council, to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an Administrative Law Judge (ALJ).

DATES: To be sure that your comments are considered, we must receive them no later than March 11, 1994.

ADDRESSEES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 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: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (410) 965–1769.

SUPPLEMENTARY INFORMATION:

### Background

Part 422 of 20 CFR provides information regarding the organization and procedures of the Social Security Administration (SSA). Subpart C of part 422 describes the procedures of the Office of Hearings and Appeals (OHA). Section 422.205 describes the organization and functions of the Appeals Council, a part of OHA.

By direct delegation of authority from the Secretary of Health and Human Services (Secretary), the Appeals Council is authorized to review hearing decisions and orders of dismissal issued by SSA's ALJs. Through the exercise of this authority, the Appeals Council is responsible for ensuring that the final decisions of the Secretary involving benefits under titles II, XI, XVI and XVIII of the Social Security Act (the Act) and part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended, are proper and in accordance with the law, regulations, and binding agency policy established in Social Security Rulings and Acquiescence Rulings.

Currently, 20 Appeals Council members, hereinafter referred to as either "Administrative Appeals Judges (AAJs)" or "members," comprise the membership of the Appeals Council. The Associate Commissioner for OHA is the Chair of the Appeals Council and is the administrative officer directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding ALJ hearings and deciding appeals. Each AAJ, other than the Chair, is assisted by an Appeals Officer who serves as a legal clerk. Organizationally, Appeals Officers are a part of the Appeals Council.

The Appeals Council considers appeals under titles II, XI, XVI, and XVIII of the Act, and under part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended. The regulations setting forth the responsibilities of the Appeals Council appear in 20 CFR part 404 (subpart J, §§ 404.967 *et seq.*), part 410 (subpart F, §§ 410.657 *et seq.*), part 416 (subpart N, §§ 416.1467 *et seq.*), and 42 CFR part 405 (subpart G, §§ 405.701(c) and 405.724), part 417 (subpart Q, § 417.634 and part 473 (subpart B, §§ 473.46 and 473.48(b)). These regulations provide that after an ALJ has issued a decision or dismissed a request for a hearing, the Appeals Council may review a case on its own motion or at the request of a party to the hearing decision or dismissal. The Council may deny or dismiss a party's request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. If the Appeals Council denies a request for review of a decision by an ALJ, the ALJ's decision becomes the final decision of the Secretary subject to judicial review under the provisions of section 205(g) of the Act. If the Appeals Council grants a request for review and issues a decision, that decision becomes the final decision of the Secretary subject to judicial review pursuant to section 205(g) of the Act.

Sections 404.970 and 416.1470 describe cases involving Social Security and supplemental security income benefits payable under title II and title XVI of the Act that the Appeals Council will review. Those sections provide that the Appeals Council will review a case if the action, findings or conclusions of the ALJ are not supported by substantial evidence; there is an error of law; or there appears to be an abuse of discretion by the ALJ. Those sections also provide that the Appeals Council will review a case that presents a broad policy or procedural issue that may affect the general public interest. The same standards apply to determine if the Appeals Council will review a case under title XVIII of the Act or under part B of title IV of the Federal Mine Safety and Health Act of 1977.

Over the years, there have been questions about the functions and operations of the Appeals Council. Some commenters have questioned the usefulness of review by the Appeals Council. Several studies have addressed the role of the Appeals Council, resulting in many recommendations for improving the Council's structure and operations.

In its Recommendation 87–7: A New Role for the Social Security Appeals Council (adopted December 18, 1987), the Administrative Conference of the United States (ACUS) concluded that the high volume of work of the Council (up to 500 cases per member per month) precluded it from detecting emerging problems, identifying new issues to be resolved, and identifying and developing needed policies. ACUS recommended that the Secretary and SSA restructure the Appeals Council in "a fashion that redirects the institution's goals and operations from an exclusive focus on processing the stream of individual cases and toward an emphasis on improved organizational effectiveness" (1 CFR 305.87–7). To this end, ACUS recommended that "the Appeals Council should be provided the authority to reduce significantly its caseload and also be given, as its principal mandate, the responsibility to recommend and, where appropriate, develop and implement adjudicatory principles and decisional standards for the disability determination process." ACUS also recommended that the agency enhance the status of the Appeals Council and provide law clerks to its members.

To address the workload problems ACUS discussed in its recommendation, SSA decided, in 1988, to add Appeals Officers to the Council to enable the members to focus their attention on the more complex and significant cases, including those cases presenting important policy or procedural issues.

Appeals Officers presently assist AAJs in considering recommendations made by the Council's support staff in OHA's Office of Appellate Operations. Appeals Officers, who are attorneys, also act as

the AAJs' staff attorneys, researching and providing legal memoranda on issues arising from cases that come to the attention of the Appeals Council. However, because the Appeals Officers do not have authority under our existing regulations to carry out any of the decision making responsibilities of the AAJs, one or more AAJs must make these decisions.

Research we have supported since we established the Appeals Officer position has persuaded us that if the Appeals Officers are authorized to assume some of the responsibilities of the AAJs, the AAJs will be able to focus more of their attention on cases that present broad policy or procedural issues. In a report commissioned by ACUS in 1989 (Report and Recommendations on the Social Security Administration's Administrative Appeals Process), Professor Frank S. Block discussed the Appeals Council's workload and stated that the Council could not be expected to assume a meaningful review function for all claims that might be presented to it. One of the recommendations in the report was that the Appeals Council be authorized "to use staff or lower level Council members to deny a request for review, and limit the review of cases by the Appeals Council to those raising significant policy issues." See Recommendation No. 12.

To complete the changes we contemplated when we established the Appeals Officer position, we propose to amend § 422.205 to authorize Appeals Officers to deny a request for review of an ALJ hearing decision. Because an ALJ's dismissal of a request for a hearing is not subject to judicial review, AAJs will continue to decide whether to grant or deny a request for review of a hearing dismissal. Appeals Officers will continue to receive guidance, direction and supervision from AAJs, including instructions as to specific issues or kinds of cases requiring the attention of the AAJ.

We believe this proposed change, which provides Appeals Officers a specific and limited authority, will improve both the quality and efficiency of the service the Appeals Council is able to provide. The proposed change should allow the Council to give the public a more timely response to their requests for review and increase the ability of the AAJs to carry out their important function of providing review of many ALJ decisions.

Although the Appeals Officer under the proposed rule would have authority to deny a request for review of an ALJ decision, he or she may also refer a particular case to an AAJ with a recommendation if it involves complex factual issues or complicated interpretative issues of law and/or regulations. In addition, all cases in which an analyst in OHA's Office of Appellate Operations prepares a recommendation to grant a request for review will be submitted directly to an AAJ for disposition. We believe this process will serve two purposes: (1) It will expedite bringing the "close cases," which are normally more complex, to the AAJ's attention; and (2) it will allow the AAJs to focus on those cases raising significant issues.

We propose to make this change in the regulation concerning the operating procedures of the Appeals Council under the provisions of sections 205, 1102, and 1631 of the Act. These statutory sections give the Secretary broad regulatory authority to establish procedures that are necessary and appropriate to carry out the Act's provisions.

**Regulatory Provisions**

The proposed rule will enable the Appeals Officers to decide whether a request for review of an ALJ decision should be denied, thereby making the decision of the ALJ the final decision of the Secretary for the purpose of any request for judicial review which a party to the decision may decide to file under section 205(g) of the Act. The Appeals Officers will not have authority to grant a request for review, to decide to review a case on the Appeals Council's own motion, to remand a case to an ALJ, to grant or to deny a request to review a hearing dismissal, or to issue a final decision. The authority to exercise those powers of the Council will remain exclusively with the AAJs.

Appeals Officers will be required to apply the same criteria as the AAJs in determining whether to deny a request for review. The Appeals Officers will apply the provisions of §§ 404.970 and 416.1470, which specify when the Appeals Council will review a case, in determining the appropriate action. Judges," or by the proposed change to expand the authority of the Appeals Officers, who organizationally are part of the Council.

**Regulatory Procedures**

*Regulatory Flexibility Act*

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. Individuals are not included in the definition of a small entity. However, for purposes of the RFA, we consider the majority of Medicare providers, physicians and suppliers to be small entities.

Inasmuch as the proposed rule does not alter the standards for Appeals Council review, we believe that it will have little, if any, effect on providers, physicians and suppliers which substantial number of small entities. Individuals are not included in the definition of a small entity. However, for purposes of the RFA, we consider the majority of Medicare providers, physicians and suppliers to be small entities.

Inasmuch as the proposed rule does not alter the standards for Appeals Council review, we believe that it will have little, if any, effect on providers, physicians and suppliers which request Appeals Council review of Medicare claims. Accordingly, we have determined, and the Secretary certifies, that this proposed rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an RFA analysis.

*Paperwork Reduction Act*

This regulation imposes no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; Reporting and recordkeeping requirements; 93.802–93.805 Social Security; and 93.807 Supplemental Security.)

**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: December 22, 1993.

**Donna E. Shalala,**

*Secretary of Health and Human Services.*

For the reasons set out in the preamble, we propose to amend part 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

## PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for Subpart C continues to read as follows:

**Authority:** Secs. 205, 221, 1102, 1869, and 1871 of the Social Security Act; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh; sec. 413(b) of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b).

2. Section 422.205 is amended by revising paragraph (c) to read as follows:

**§ 422.205 Review by Appeals Council.**

* * * * *

(c) The denial of a request for review of a hearing decision concerning a determination under § 422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

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[FR Doc. 94–481 Filed 1–7–94; 8:45 am]

BILLING CODE 4190–29–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 93–307, RM–8386]**

### Radio Broadcasting Services; Jensen Beach and Melbourne, FL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a joint petition by HLG, Inc., licensee of Station WHLG(FM), Jensen Beach, Florida, and City Broadcasting Co., Inc., license of Station WGGD(FM), Melbourne, Florida, proposing the substitution of Channel 272C3 for Channel 272A at Jensen Beach, Florida, and modification of the license for Station WHLG(FM) to specify the higher powered channel, and the substitution of Channel 236A for Channel 272A at Melbourne, Florida, and the modification of Station WGGD(FM)'s license to specify the alternate Class A channel. Channel 272C3 can be allotted to Jensen Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed transmitter site. The coordinates for Channel 272C3 at Jensen Beach are 27–12–53 North Latitude and 80–15–24 West Longitude. Channel 236A can be allotted to Melbourne in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.4 kilometers (4.0 miles) north of the community, in order to avoid a short-spacing to Station WWRM(FM), Channel 235C, Tampa, Florida. The coordinates for Channel 236A at Melbourne are 28–08–08 North Latitude and 80–35–35 West Longitude.

**DATES:** Comments must be filed on or before February 25, 1994, and reply comments on or before March 14, 1994.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., suite 1100, Washington, DC 20005–2327 (Counsel for HLG, Inc. and City Broadcasting Company, Inc.).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–307, adopted December 8, 1993, and released January 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–471 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 73

**[MM Docket No. 93–316, RM–8403]**

### Radio Broadcasting Services; Douglas and Unionville, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Orchon Media, Inc., permittee of Station WKZZ(FM), Channel 223A, Douglas, Georgia, requesting the substitution of Channel 223C3 for Channel 223A at Douglas, Georgia, and the reallotment of Channel 223C3 from Douglas to Unionville, Georgia, and the modification of the construction permit for Station WKZZ(FM) to specify Unionville as its community of license, in accordance with Section 1.420(i) of the Commission's rules. The coordinates for Channel 223C3 at Unionville are North Latitude 31–31–05 and West Longitude 83–20–43.

**DATES:** Comments must be filed on or before February 25, 1994, and reply comments on or before March 14, 1994.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert S. Stone, McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901–0550 (Attorney for petitioner).

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–316, adopted December 13, 1993, and released January 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–472 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 93–315, RM–8320]**

## Radio Broadcasting Services; Huntsville, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Contemporary Broadcasting, Inc., proposing the substitution of Channel 278C1 for Channel 278C2 at Huntsville, Missouri, and modification of the construction permit for Station KTDI to specify operation on the higher class channel. The coordinates for Channel 278C1 are 39–39–30 North Latitude and 92–13–10 West Longitude. We shall propose to modify the construction permit for Station KTDI in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

**DATES:** Comments must be filed on or before February 25, 1994, and reply comments on or before March 14, 1994.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Janet P. Cox, Vice President, Contemporary Broadcasting, Inc., 222 Indacom Drive, St. Peters, Missouri 63376.

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

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–315, adopted December 13, 1993, and released January 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 94–473 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Parts 391, 392, and 396**

**[FHWA Docket No. MC–93–32]**

**RIN 2125–AD28**

## Removal of Obsolete and Redundant Regulations and Appendices

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FHWA is proposing to remove obsolete and redundant regulations and appendices from the Federal Motor Carrier Safety Regulations (FMCSRs). In addition, the FHWA is proposing minor technical changes in an effort to keep the FMCSRs current. The removal of obsolete and redundant regulations and appendices is one of the first actions taken by the FHWA following the Agency's Zero Base Regulatory Review public outreach sessions. The deletion of these regulations should result in the reduction of the paperwork burden on the industry without any reduction in safety benefits.

**DATES:** Comments must be received on or before March 11, 1994.

**ADDRESSES:** Submit written, signed comments to FHWA Docket No. MC–93–32, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Blount, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

The primary focus of the FHWA's Motor Carrier Safety Program is to reduce commercial motor vehicle (CMV) accidents and the attendant fatalities, injuries, and property losses. To remain effective, regulations must reflect trends in State regulatory practices as well as technical and operational changes in the motor carrier industry. The motor carrier safety regulations were initially promulgated and enforced by the Interstate Commerce Commission (ICC) in 1937. In 1967 the Department of Transportation (DOT) was created by the Department of Transportation Act of 1966, (Pub. L. 89–670, 80 Stat. 931) and the regulatory and enforcement authority for motor carrier safety was transferred to the DOT. Today this authority is vested in the FHWA.

Over the years, the FMCSRs have been modified incrementally, usually by addition of new provisions and often because of congressional mandates. Some sections, however, no longer correspond to current practices in the motor carrier industry, and others have been superseded by State or local initiatives. In September 1992, the Federal Highway Administration began a comprehensive multi-year effort to re-create a body of safety rules and regulations that are (1) understandable, (2) enforceable, (3) capable of being implemented by industry, and above all, (4) consistent with highway safety. The effort has been termed "Zero Base

Regulatory Review." The review will not edit the current regulations, but will start with the basic questions of who, what, and how do we regulate and what is essential to improve motor carrier safety.

Concurrent with the Zero Base effort, the FHWA participated in a governmentwide review of regulations designed to identify regulations that were no longer required or unnecessarily hindered economic growth. The FHWA's proposed deletions were incorporated into an NPRM published by the Office of the Secretary of Transportation (OST) on May 20, 1992 (57 FR 21362). On December 22, 1992, the OST published a final rule but declined to take final action on the FHWA proposals. 57 FR 60725.

Docket comments submitted in response to the May 20 NPRM, and other comments received in conjunction with the FHWA's Zero Base review effort, were evaluated by the FHWA in preparing the current NPRM. The FHWA has identified several requirements that are obsolete or redundant, i.e., which are repeated by State law or covered in another part of the FMCSRs or which could be reissued as non-regulatory guidance.

**Discussion**

*Criteria Used for Regulation Review*

The objectives of the FHWA's regulatory review were to (1) eliminate requirements not needed to carry out the regulatory program; (2) ensure that rules are clear and succinct; (3) reduce lengthy and excessively detailed regulations whenever possible; (4) eliminate redundancy; (5) eliminate excessive reporting requirements; and (6) reduce or eliminate paperwork burdens wherever possible, without compromising safety.

*Section-by-Section Analysis*

Part 391—Qualifications of Drivers

The primary function of part 391 is to ensure that operators of CMVs meet minimum physical standards and possess the knowledge, skills, and abilities to operate CMVs safely. The FHWA has reviewed the regulations in part 391 and has determined that all requirements pertaining to the written examination and record of violations are unnecessary, for the reasons set forth below.

*Written examination.* The written examination tests prospective drivers on the rules and requirements established by the FMCSRs. However, the examination is an instructional tool only and a person's qualification is not affected by his or her performance on the examination. Carriers are not obligated to take applicants' scores into consideration when making hiring decisions, so the Federal requirement is of only marginal usefulness. Carriers may continue to give the test, but the FHWA will no longer require them to do so. Moreover, drivers who are subject to the Commercial Driver's License (CDL) requirements must pass a knowledge test to obtain a CDL, so for CDL holders the written exam is both redundant and ineffectual. Therefore, the written examination (contained in appendix C) and all related qualification and recordkeeping requirements would be removed. The sections to be removed or amended by this proposal include §§ 391.11(b)(11); 391.35; 391.37; 391.51(c)(5); 391.51(d)(3); 391.61; 391.67(a); 391.67(c); 391.69(b); 391.71(a) and appendix C to subchapter B.

*List of violations.* The objective of the record of violations is to notify the employing motor carrier of all of a driver's moving violations of motor vehicle traffic laws. This information is to be used by the carrier to ensure that its drivers have not been disqualified to drive a CMV.

The CDL regulations require CMV drivers to notify their current employers within 30 days of any conviction for a non-parking violation in any kind of vehicle (not only a CMV). If the conviction occurred in a jurisdiction other than the one that issued the CDL, the driver must also report it to the issuing jurisdiction within 30 days (49 CFR 383.31). Therefore, the provisions in § 391.27 for motor carriers to require their drivers to prepare and furnish a list of all traffic violations during the preceding 12 months at least once every year, and to maintain the record of violations in driver qualification files for three years, are unnecessary and redundant. Furthermore, it is a common practice for motor carriers or their insurance providers to obtain from the State licensing agency the motor vehicle records on each of their drivers once or more per year, although this is not required. The FHWA is therefore proposing to delete § 391.27 and all related qualification and recordkeeping requirements. The sections to be removed or amended by this proposal include §§ 391.11(b)(8); 391.27; 391.51(b)(4); 391.51(h)(3); 391.63(a)(4); 391.67(a).

*Miscellaneous.* The FHWA is also proposing minor technical corrections to § 391.51(b)(2) and § 391.51(g). These corrections will bring the regulation into conformance with organizational changes of the regional offices of the Federal Highway Administration, and will correctly identify the new title of the Regional Director of Motor Carriers.

*Drivers operating in Hawaii.* The limited exemption in § 391.69(a) for drivers operating in the State of Hawaii is obsolete. Section 391.69(a) states that "drivers who will reach the age of 21 no later than April 1, 1976, may continue to drive within the State of Hawaii." Since this date has passed, the provision should be removed.

Part 392—Driving of Motor Vehicles

The FHWA has identified regulations within part 392, Driving of Motor Vehicles, that are redundant of State and local laws. The regulations in part 392 are designed to reduce Commercial Motor Vehicle accidents by requiring that every motor vehicle be operated in accordance with State and local laws and ordinances, or FHWA regulations, whichever imposes the higher standard of care. The driving regulations and rules of the road in part 392 resemble traffic laws and ordinances. Basic rules of the road for trucks and buses are more appropriately monitored and enforced by State and local authorities under their own laws than by Federal regulators. In order to reduce duplication of enforcement requirements, many of the rules contained in part 392 should be removed. The FHWA is proposing to remove the sections discussed below:

*Section 392.9a Corrective lenses to be worn.*

The FHWA is proposing to remove this section because it is duplicated by State driver licensing laws. State laws routinely require drivers who need glasses or contact lenses to wear them while driving. In addition, the requirement that wearers of contact lenses carry an extra set of them while driving does nothing to improve safety since a spare lens could not be inserted before bringing the vehicle to a stop.

*Section 392.12 Drawbridges; stopping of buses.*

*Section 392.18 slow moving vehicles; hazard warning signal flashers.*

*Section 392.21 Stopped vehicles not to interfere with other traffic.*

The FHWA is proposing to remove these sections because they are unenforceable by FHWA field staff and are more appropriately addressed by State and local ordinances. In most, if not all, cases, State and local laws provide that drivers are required to observe traffic signs. State and local enforcement officers are responsible for maintaining proper traffic flow and handling slow moving and stepped vehicles.

*Section 392.30 Lighted lamps; moving vehicles.*

*Section 392.31 Lighted lamps; stopped or parked vehicles.*

*Section 392.32 Upper and lower headlamp beams.*

The FHWA is proposing to remove these sections because they are duplicated by State laws and can only be enforced by State or local agencies. In addition, the requirements for lighting devices are addressed in part 393 of the FMCSRs.

*Section 392.40 All accidents.*

*Section 392.41 Striking unattended vehicle.*

The FHWA is proposing to remove these two sections because they duplicate State ordinances.

*Section 392.61 Driving by unauthorized person.*

*Section 392.62 Bus driver; distraction.*

*Section 392.65 Sleeper berth; transfer to or from.*

*Section 392.69 Sleeper berth, occupation.*

The FHWA is proposing to remove §§ 392.61 and 392.69 because the FHWA believes that these situations should be governed by company policy or a labor management agreement. Section 392.62 duplicates State and local regulations and should be removed. Section 392.65 is proposed to be removed because it is obsolete. There are very few truck tractors still in use that require entry into the sleeper berth from outside the vehicle.

Part 396—Inspection, Repair, and Maintenance

Part 396 places the responsibility upon the motor carrier to insure that its vehicles are properly maintained. The FHWA is proposing to remove § 396.3(b)(4) because it is redundant. Section 396.3(b)(3) already requires motor carriers to maintain for vehicles controlled for 30 consecutive days or more a record of inspection, repairs and maintenance indicating their date and nature. Since the lubrication record required by § 396.3(b)(4) is a maintenance record, the requirement is duplicative and should be removed.

*Appendix A to Subchapter B*

Appendix A to subchapter B includes all interpretations that were issued by the FHWA up to the publication of a collection of interpretations on November 23, 1977 (42 FR 60078). A new compilation of interpretations was recently published in the **Federal Register** on November 17, 1993 (58 FR 60734). Therefore, appendix A is redundant and obsolete, and the FHWA is proposing it be removed.

**Rulemaking Analyses and Notices**

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

This proposed rule would remove obsolete and redundant regulations from the FMCSRs. The FHWA has determined that this document is not a significant regulatory action under Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. This action would lessen the regulatory burden on small and large entities subject to the FMCSRs by removing recordkeeping requirements associated with the written examination and record of violations. Based on the evaluation of this proposal, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12612 (Federalism Assessment)*

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

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Paperwork Reduction Act*

This rulemaking action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

*Regulation Identification Number*

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

**List of Subjects in 49 CFR Parts 391, 392, and 396**

Highway safety, Highways and roads, Motor carriers, and Motor vehicle safety.

Issued on: January 3, 1994.

**Rodney E. Slater,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, parts 391, 392, 396, and appendices A and C to subchapter B as set forth below:

## PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for part 391 continues to read as follows:

**Authority:** 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

**§ 391.11 [Amended]**

2. Section 391.11 is amended by removing paragraphs (b)(8) and (b)(11), and redesignating paragraphs (b)(9), (10) and (12) as paragraphs (b)(8), (9) and (10).

**§§ 391.27, 391.35, and 391.37 [Removed and Reserved]**

3. Sections 391.27, 391.35, and 391.37 are removed and reserved.

**§ 391.51 [Amended]**

4. Section 391.51 is amended as follows:

a. In paragraph (b)(2), by removing "The Regional Federal Highway

Administrator's letter" and inserting in lieu thereof the words "The letter from the Regional Director of Motor Carriers";

b. By removing paragraph (b)(4) and redesignating paragraph (b)(5) as paragraph (b)(4), and by adding the word "and" at the end of paragraph (b)(3);

c. In paragraph (c)(4), by removing "; and" and inserting in lieu thereof a period, and by removing paragraph (c)(5);

d. By removing paragraph (d)(3) and redesignating paragraph (d)(4) as paragraph (d)(3), and by adding the word "and" at the end of paragraph (d)(2);

e. In paragraph (g), by removing the words "Director, Regional Motor Carrier Safety Office" and "Directors of Regional Motor Carrier Safety Offices" and inserting in lieu thereof "Regional Director of Motor Carriers" and "Regional Directors of Motor Carriers", respectively; and

f. By removing paragraph (h)(3) and redesignating paragraph (h)(4) as paragraph (h)(3).

5. Section 391.61 is revised to read as follows:

**§ 391.61 Drivers who were regularly employed before January 1, 1971.**

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(8) of § 391.11 (relating to qualifications of drivers).

**§ 391.63 [Amended]**

6. Section 391.63 is amended by removing paragraph (a)(4), and paragraph (a)(3) is amended by removing "; or" and inserting in lieu thereof a period.

7. Section 391.67 is revised to read as follows:

**§ 391.67 Drivers of articulated (combination) farm vehicles.**

The following rules in this part do not apply to a farm vehicle driver (as defined in § 390.5) who is 18 years of age or older and who drives an articulated motor vehicle:

(a) Paragraphs (b)(1), (b)(9), and (b)(10) of § 391.11 (relating to driver qualifications in general).

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(c) Subpart D (relating to road tests).

(d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his person before January 1, 1973.

(e) Subpart F (relating to maintenance of files and records).

8. Section 391.69 is revised to read as follows:

**§ 391.69 Drivers operating in Hawaii.**

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(8) of § 391.11 (relating to qualifications of drivers).

**§ 391.71 [Amended]**

9. In § 391.71 paragraph (a) introductory text is amended by removing the words "and § 391.35 (relating to written examination)" and inserting the word "and" before the reference to "§ 391.31."

## PART 392—DRIVING OF MOTOR VEHICLES

10. The authority citation for part 392 is revised to read as follows:

**Authority:** 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

**§§ 392.9a, 392.12, 392.18, 392.21, 392.30, 392.31, 392.32, 392.40, 392.41, 392.61, 392.62, 392.65, and 392.69 [Removed and Reserved]**

11. Sections 392.9a, 392.12, 392.18, 392.21, 392.30, 392.31, 392.32, 392.40, 392.41, 392.61, 392.62, 392.65, and 392.69 are removed and reserved.

## PART 396—INSPECTION, REPAIR, AND MAINTENANCE

12. The authority citation for part 396 continues to read as follows:

**Authority:** 49 U.S.C. app. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

**§ 396.3 [Amended]**

13. Section 396.3 is amended by removing paragraph (b)(4) and redesignating paragraph (b)(5) as paragraph (b)(4), and by adding the word "and" at the end of paragraph (b)(3).

**Appendices A and C [Removed and Reserved]**

14. In chapter III, suchapter B, appendices A and C are removed and reserved.

[FR Doc. 94–444 Filed 1–7–94; 8:45 am]

BILLING CODE 4910–22–M

# Notices

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

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

### Food and Nutrition Service

### Summer Food Service Program for Children; Program Reimbursement for 1994

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

**EFFECTIVE DATE:** January 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305-2620.

**SUPPLEMENTARY INFORMATION:** This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

#### Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

#### Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1994 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1992 through November 1993.

The new 1994 reimbursement rates in dollars are as follows:

MAXIMUM PER MEAL REIMBURSEMENT RATES

| | |
|---|---|
| Operating Costs: | |
| Breakfast | 1.1600 |
| Lunch or Supper | 2.0825 |
| Supplement | .5450 |
| Administrative Costs: | |
| a. For meals served at rural or self-preparation sites: | |
| Breakfast | .1075 |
| Lunch or Supper | .1975 |
| Supplement | .0525 |
| b. For meals served at other types of sites: | |
| Breakfast | .0850 |
| Lunch or Supper | .1650 |
| Supplement | .0425 |

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 1.91 per cent increase during 1993 (from 141.5 in November 1992 to 144.2 in November 1993) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. Because of the relatively small adjustment, the Department points out that several of the new administrative rates are identical to the rates in effect for the 1993 Program.

**Authority:** Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 3, 1994.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 94-478 Filed 1-7-94; 8:45 am]

BILLING CODE 3410-30-M

### Forest Service

### Grand Island Advisory Commission; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Grand Island Advisory Commission meeting.

**SUMMARY:** The Grand Island Advisory Commission will meet on January 21, 1994 at 8 a.m. at the Comfort Inn on M-28 East in Munising, Michigan. An agenda for the one day meeting will consist of a final planning team update, a review of the final changes to the alternatives and a discussion by the Advisory Commission on the recommendation to the Secretary

Interested members of the public are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions about this meeting to Dennis Jones, Public Service Team Leader, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786-4062.

Dated: January 3, 1994.

**Deborah Rebholz,**

*Acting Forest Supervisor.*

[FR Doc. 94-419 Filed 1-7-94; 8:45 am]

BILLING CODE 3410-11-M

### Rural Electrification Administration

### Municipal Interest Rates for First Quarter of 1994

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of interest rates for the first quarter of 1994.

**SUMMARY:** REA hereby announces the interest rates for municipal rate loans with interest rate terms beginning during the first calendar quarter of 1994.

**DATES:** These interest rates are effective for interest rate terms that commence during the period beginning January 1, 1994, and ending March 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sue Arnold, Management Analyst, U.S. Department of Agriculture, Rural

Electrification Administration, room 2230–s, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: On December 20, 1993, at 58 FR 66260, REA published a rule establishing a program for electric loans at municipal interest rates. Pursuant to 7 CFR 1714.5 of this rule, the interest rates on these municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter. In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 1994.

| Interest rate term ends in (year) | Interest rate (0.000 percent) |
|---|---|
| 2015 or later | 5.375 |
| 2014 | 5.375 |
| 2013 | 5.375 |
| 2012 | 5.375 |
| 2011 | 5.375 |
| 2010 | 5.250 |
| 2009 | 5.250 |
| 2008 | 5.250 |
| 2007 | 5.125 |
| 2006 | 5.000 |
| 2005 | 4.875 |
| 2004 | 4.750 |
| 2003 | 4.750 |
| 2002 | 4.625 |
| 2001 | 4.500 |
| 2000 | 4.375 |
| 1999 | 4.250 |
| 1998 | 4.125 |
| 1997 | 3.875 |
| 1996 | 3.625 |
| 1995 | 3.375 |

Dated: January 4, 1994.

Wally Beyer,

*Administrator.*

[FR Doc. 94–479 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–15–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Order No. 676]

### Tampa, Florida; Expansion of Foreign-Trade Zone 79

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Expansion of Foreign-Trade Zone 79, Tampa, Florida.

Whereas, an application from the City of Tampa, Florida, grantee of Foreign-Trade Zone No. 79, for authority to expand its general-purpose zone in Tampa, Florida, within the Tampa Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on April 20, 1992, (Docket 12–92, 57 FR 19596, 5/7/92) (Amendments: 58 FR 31362, 6/2/93; 58 FR 36932, 7/9/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, as amended, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 29th day of December 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–512 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 675]

### Maytag Corp., Galesburg, Illinois; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Removal of Restriction, Maytag Corp., (Household Refrigerators), Subzone 133A, Galesburg, Illinois.

Whereas, pursuant to § 400.32(b)(1) of the Board's regulations, the Maytag Corporation, operator of FTZ Subzone 133A in Galesburg, Illinois (Maytag refrigerator manufacturing plant), has requested removal of Restriction #2 of Board Order 448 (filed 6–4–93 as A(32b1)–2–93; Doc. 61–93 was assigned 12–10–93);

Whereas, Board Order 448 (54 FR 47246; 11–13–89) approving Subzone 133A included Restriction #2 requiring the election of privileged foreign status on foreign compressors (the restriction was temporarily suspended until 12–31–93, Board Order 485, 55 FR 37341, 9–11–90);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making decisions relating to changes in manufacturing/processing activity within existing zones in situations where the proposed activity is similar to that recently approved by the Board; and,

Whereas, the FTZ Staff reviewed the proposal, pursuant to said provision and found that there is no longer a reason for the restriction, and the Executive Secretary concurs in the staff report recommending approval;

Now, therefore, the Acting Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–510 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 674]

### Boone County, Kentucky; Expansion of Foreign-Trade Zone 47

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Expansion of foreign-trade zone 47, Boone County, Kentucky.

Whereas, an application from the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 47, for authority to reorganize and expand its general-purpose zone in Boone County, Kentucky, within the Cincinnati Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on November 12, 1992 (Docket 34–92, 57 FR 54568, 11/19/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of December 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–509 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 678]**

## American Food Service Corp., Pennsylvania; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Expansion of foreign-trade zone 35 and approval of export processing activity (beef products), Philadelphia, Pennsylvania area.

Whereas, an application from the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone No. 35 (Philadelphia, Pennsylvania area), for authority to expand its general-purpose zone to include a site in King of Prussia, Pennsylvania, adjacent to the Philadelphia Customs port of entry, and for authority on behalf of American Foodservice Corporation (AFSC) to conduct activity within FTZ 35 involving the processing of beef products for export, was filed by the Foreign-Trade Zones (FTZ) Board on June 21, 1993, (Docket 26–93, 58 FR 35428, 7/1/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board, in consultation with the U.S. Department of Agriculture, has found that the requirements of the Act and the regulations are satisfied, and that approval of the expansion and the beef processing activity for export is in the public interest;

Now, therefore, the Board hereby orders:

The application for said expansion and for said processing activity is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the following restrictions:

1. AFSC shall reexport all beef admitted to the zone in foreign status (19 CFR 146.41 and 146.42); and,

2. AFSC shall comply with all meat inspection requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service.

Signed at Washington, DC, this 29th day of December 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–507 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 679]**

## SmithKline Beecham Pharmaceuticals Co., Cidra, Puerto Rico; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Grant of authority for subzone status, SmithKline Beecham Pharmaceuticals Co., (Pharmaceutical Products), Cidra, Puerto Rico.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61 (San Juan, Puerto Rico), for authority to establish a special-purpose subzone at the pharmaceutical manufacturing plant of SmithKline Beecham Pharmaceuticals Company, located in Cidra, Puerto Rico, was filed by the Board on January 15, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1-93, 58 FR 7529, 2-8-93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61C) at the SmithKline Beecham Pharmaceuticals Company plant in Cidra, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 29th day of December 1993.

**Barbara R. Stafford**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–508 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

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**[Order No. 677]**

## Sterling Pharmaceuticals Inc., Barceloneta, Puerto Rico; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order: Grant of Authority for subzone status, Sterling Pharmaceuticals Inc., (Pharmaceutical Products), Barceloneta, Puerto Rico.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61 (San Juan, Puerto Rico), for authority to establish a special-purpose subzone at the pharmaceutical products manufacturing plant of Sterling Pharmaceuticals Inc., located in Barceloneta, Puerto Rico, was filed by the Board on May 12, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–8–

93, 58 FR 29192, 5–19–93) (Amendment: 58 FR 36933, 7–9–93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61B) at the Sterling Pharmaceuticals Inc., plant in Barceloneta, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December 1993.

**Barbara R. Stafford**

*Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 94–513 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

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## International Trade Administration

[A–588–807]

## Final Results of Antidumping Duty Administrative Reviews; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative reviews.

**SUMMARY:** On November 4, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty order on industrial belts and components thereof, whether cured or uncured (industrial belts), from Japan. These reviews cover one manufacturer/exporter and the periods June 1, 1991 through May 31, 1992 and June 1, 1992 through May 31, 1993.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have not changed the margins from those presented in our preliminary results.

**EFFECTIVE DATE:** January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Charles Vannatta or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 4, 1993, the Department published in the **Federal Register** (58 FR 58839) the preliminary results of its 1991–92 and 1992–93 administrative reviews of the antidumping duty order on industrial belts from Japan (June 14, 1989, 54 FR 25314, amended August 4, 1989, 54 FR 32104). The Department has now completed these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

### Scope of the Reviews

Imports covered by these reviews are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Japan. These products include V-belts, synchronous belts, and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links. These reviews exclude conveyor belts and automotive belts, as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the periods of review the merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings, 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover one Japanese manufacturer and exporter of industrial belts to the United States, Mitsuboshi Belting Limited (MBL), and the periods June 1, 1991 through May 31, 1992, and June 1, 1992 through May 31, 1993.

### Analysis of the Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results of these administrative reviews. We received a case brief from MBL, and a rebuttal brief from the petitioner, Gates Rubber Company. We did not receive a request for a hearing.

*Comment:* MBL acknowledges that the Department's resort to best information available (BIA) is authorized under section 776(c) of the Tariff Act, since MBL did not respond to the Department's questionnaire.

MBL argues, however, that the Department should use information obtained in the first administrative review (1989–90) as BIA instead of the rate from the original less-than-fair-value (LTFV) investigation. MBL contends that the Department is required to consider the most recent information available in deciding upon a BIA rate. According to MBL, the information provided by the respondent in the first administrative review is the most probative evidence of the current margin because the LTFV margin was based solely on information provided by the petitioner for the period October 1986 through March 1988.

Furthermore, MBL argues that it could not make an informed decision to reply to the questionnaires. MBL claims that since the Department has not completed the 1990–91 review before distributing questionnaires for the 1991–92 and 1992–93 reviews, the Department cannot infer that MBL would have responded to these questionnaires if it believed the margins for the 1991–92 and 1992–93 reviews would be lower. Therefore, MBL claims that the Department's conduct in this case is punitive.

Finally, MBL points out that the International Trade Commission's affirmative injury determination is being appealed at the Court of Appeals for the Federal Circuit (CAFC). MBL urges the Department not to assess antidumping duties and order liquidation of their entries in a review where the validity of the underlying order is in question.

Gates argues that the Department should not change its preliminary decision to resort to the LTFV margin from the original investigation as BIA. Gates states that MBL has provided no authority for the proposition that the Department should use as BIA the margin from the preliminary results in the 1989–90 administrative review. Gates contends that knowledge of results of prior reviews is irrelevant. Gates submits that MBL knew it might receive the highest rate, and that it would have submitted information proving lower margins if it could. Finally, Gates asserts that there is no justification for delaying completion of the reviews.

*Department's Position:* Section 776(c) of the Tariff Act requires us to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an

investigation." In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide information requested (19 CFR 353.37(b)). MBL's contention that the Department should use the information obtained in the 1989–90 administrative review is contrary to Department policy. When a respondent refuses to cooperate with the Department, it is our policy to assign as a dumping margin to that respondent, as BIA, the higher of: (1) The highest rate found for any firm in the original LTFV investigation or previous administrative review, or (2) the highest rate found in the current review (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France et al, Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360, 28379 (June 24, 1992)). The Department's methodology for assigning BIA has been upheld by the CAFC (see *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993), *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993)). Because MBL refused to respond to the Department's questionnaire, it was reasonable for the Department to assign to MBL, as BIA, a rate of 93.16 percent, the highest rate found for any firm in the original LTFV investigation. Furthermore, because the law does not provide for extensions of deadlines pending the outcome of court decisions in other proceedings, we have not delayed our final results.

**Final Results of the Review**

As a result of these administrative reviews, the Department determines that a dumping margin of 93.16 percent exists for MBL for the periods June 1, 1991 through May 31, 1992 and June 1, 1992 through May 31, 1993.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act:

(1) For subject merchandise exported by Mitsuboshi Belting Ltd., a cash deposit of 93.16 percent;

(2) For subject merchandise exported by manufacturers not covered in these reviews but covered in previous reviews or in the original LTFV investigation, a cash deposit based on the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be 93.16 percent, the "all other" rate established in the LTFV investigation, as discussed below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty orders.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 94–516 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–M

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[A–588–703]

## Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On January 28, 1992, the Department of Commerce published the preliminary results of its 1989–90 administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers two manufacturers/exporters of this merchandise to the United States during the period June 1, 1989 through May 31, 1990.

The Department gave interested parties the opportunity to comment on the preliminary results. Based on the analysis of the comments received, the Department adjusted the margins for both companies.

**EFFECTIVE DATE:** January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Philip Marchal or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3813.

**SUPPLEMENTARY INFORMATION:**

### Background

On January 28, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order (June 7, 1988, 53 FR 20882) on certain internal-combustion, industrial forklift trucks from Japan in the **Federal Register** (57 FR 3164). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

### Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are

further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under the Harmonized Tariff System (HTS) item numbers 8427.20.00–0, 8427.90.00–0, and 8431.20.00–0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The review covers sales made by Toyota Motor Corporation (Toyota) and Toyo Umpanki Company, Limited (TCM) during the period from June 1, 1989 through May 31, 1990.

**Such or Similar Comparisons**

For all respondent companies, pursuant to section 771(16) of the Tariff Act, the Department established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift as imported. Within these categories, the product comparisons were based on six primary characteristics, to which points were assigned to indicate their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; and engine size, 1 point. The sum of these numbers, the "SSM Index Number", was used to match U.S. and home market (HM) sales. We considered models that both summed to 21 points as identical. Where there were no identical products sold in the home market, the Department selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

**Data Changes Included in the Final Results of Review**

We found that in TCM's purchase price (PP) sales analysis, we did not include in the credit expense calculation the time between shipment from Japan and subsequent shipment to the customer by TCM's U.S. subsidiary. Therefore, for the final results, we included these expenses.

**Analysis of Comments Received**

The Department gave interested parties the opportunity to comment on the preliminary results. At the request of the petitioners, (Hyster-Yale Company, Independent Lift Truck Builders Union, International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), and United Shop and Service Employees) and one respondent, a hearing was held on March 19, 1992. Case and rebuttal briefs were received from petitioners, Toyota, and TCM.

*General Comments*

*Comment 1:* Petitioners contend that the Department should run its sales below cost of production (COP) test on comparison models only, not on entire such or similar categories. Petitioners argue that forklifts are not a fungible product, but are instead similar to "job order" products such as mechanical transfer presses, offshore oil platforms, and large power transformers. Petitioners assert that the unique nature of each product means that there is often just one HM sale that is comparable to the U.S. sale, and that if the single HM sale is sold below COP, there likely will be no dumping margin. Petitioners state that this case is distinguishable from other dumping cases (*e.g.*, agricultural, chemical, or metals cases) because relatively few HM sales are weight-averaged. Petitioners accordingly argue that the Department should conduct the sales below COP test on the concordance tape containing comparison models only, not on the universe of HM sales.

TCM argues that, because forklift trucks are not custom-built products, the Department correctly applied the COP test. TCM further states that the Department should maintain its policy of conducting the COP test on each load capacity category.

*Department's Position:* We agree with petitioners. In accordance with our standard policy, we have revised the sales below COP test so that the test is conducted on a model-specific basis instead of on a such-or-similar category basis.

*Comment 2:* Petitioners state that the Department should revise its model match methodology because it gives insufficient weight to tire type and, therefore, results in more matches of merchandise, but not in matches that are the most similar. Petitioners contend that tire type is a crucial attribute of a forklift truck because the tire type determines the construction of the frame of the truck, which the Department found to be the "identifying feature and principal component of the product" in the final determination in this case (Final Determination of Sales at Less Than Fair Value: Certain Internal Combustion Industrial Forklift Trucks from Japan (Forklifts LTFV), 53 FR 12552 (April 15, 1988)).

Petitioners suggest three alternative methods for the such or similar comparisons and tire type matching. First, petitioners recommend that the Department return to the original less than fair value matching methodology. Second, petitioners propose increasing the weight for tire type from six to ten points. Finally, petitioners state that matches with less than fifteen points do not constitute similar merchandise because the predominant features of the HM merchandise would be substantially different from the U.S. truck; petitioners argue that the Department should therefore omit all HM sales with less than fifteen points.

TCM notes that the Department's current model match methodology was revised in order to improve the model match process. TCM and Toyota argue that the Department's matching methodology, which gives tire type the highest weight, establishes tire type as the most important criterion. Toyota contends that petitioners' assertion that forklift trucks cannot be similar unless they have an SSM index number of fifteen is unreasonable. This cut-off would eliminate matches of trucks that are "identical in every respect * * * except upright style and its related maximum fork height." Respondents further argue that the Department's twenty percent difference in merchandise test already eliminates dissimilar models, and that the cut-off suggested by petitioners would merely result in a greater number of unmatched sales.

*Department's Position:* We agree with respondents. During the first administrative review, we refined the model match methodology used in the less-than-fair-value (LTFV) investigation. We are employing this same model match methodology for these final results. One such improvement was the use of a point-weighting scheme, which increased the precision and simplified the reporting requirements. Of the six model match elements, we attach the most weight to tire type. Petitioners did not provide evidence to support their claim that the points accorded to tire type should be

increased from six to ten, or that dissimilar models were matched as the result of a flaw in our methodology. For further discussion of our model match methodology see Comment 80, Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review (Forklifts I), (57 FR 3167, January 28, 1992).

*Comment 3:* Petitioners' claim that the Department's adjustment for the consumption tax forgiven upon exportation of forklift trucks to the United States is erroneous in several respects. Petitioners state that the Court of International Trade (CIT) has held that taxes on sales in the HM must be passed through to the customer before an upward adjustment of an imputed tax can be made to United States price (USP), and cite *Zenith Electronics Corp.* v. *United States*, 755 F. Supp. 397 (CIT 1990) (*Zenith I*), *Daewoo Electronics Co.*, v. *United States*, 712 F. Supp. 931 (CIT 1989) (*Daewoo*), and *Zenith Electronics Corp.* v. *United States*, 633 F. Supp. 1382 (CIT 1988) (*Zenith II*) in support of this proposition. Petitioners contend that no adjustment is warranted in this case, since neither Toyota nor TCM claimed or proved that the consumption tax imposed on HM sales is passed through to the customers in Japan.

Petitioners further argue that the Department improperly made an adjustment to foreign market value (FMV) to eliminate the absolute difference between the amount of tax in the two markets by adding to FMV the amount of the consumption tax imputed to the U.S. sale. Petitioners state that it is improper for the Department to make such an adjustment in the interest of achieving tax neutrality.

Toyota argues that petitioners' arguments disregard the Department's policy and practice with respect to adjustments to FMV and USP for the Japanese consumption tax. Toyota cites the Department's disagreement with the CIT decisions cited by petitioners. Toyota asserts that it is the Department's long-standing practice not to attempt to measure the amount of tax passed through to customers in the HM. Under the Department's interpretation, section 772(d)(1)(C) of the Tariff Act does not require the Department to measure the incidence of tax in an economic sense. Rather, according to Toyota, the full adjustment for consumption tax is necessary to make an appropriate comparison between USP and FMV. Toyota states that in determinations involving HM taxes, the Department has repeated that it has not had an opportunity to appeal the issue on the merits. Until such time as the issue is finally resolved on appeal, the Department should maintain its long-standing practice.

TCM argues that the Department's consumption tax adjustment is proper and accords with the law, regulations and long-standing practice.

*Department's Position:* On October 7, 1993, the United States Court of International Trade (CIT), in *Federal-Mogul Corp. and The Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Tariff Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Tariff Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decisions. The Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Tariff Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp.* v, *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

*Comments Specific to Toyota*

*Comment 4:* Toyota contends that for the final results, the Department should not rely on best information available (BIA) to calculate ocean freight, U.S. coop advertising, certain indirect selling expenses (ISE) incurred in Japan on behalf of U.S. sales, and the offset expense for income and profit from other business ventures included in value-added. Toyota claims that the Department made clear in its supplemental questionnaire that, because it was conducting two administrative reviews simultaneously, Toyota should provide only a narrative description of how reallocations and corrections were to be made, which were then to be the subject of petitioners' comment and Department scrutiny. In its supplemental questionnaire response dated June 7, 1991, Toyota responded as directed, providing only narrative descriptions, and not revised data on computer tape.

Once the Department made its decision regarding the accuracy of these reallocations and corrections, it would give Toyota an opportunity to resubmit its data employing the proper reallocations and corrections. Toyota states that it was therefore awaiting the Department's decisions concerning these recalculations for the first administrative review before submitting revised computer tapes for the second review.

Toyota claims that at no time prior to the preliminary results, despite numerous contacts, did the Department ask Toyota to submit the reallocations or corrections, instead directing Toyota to await the Department's decision regarding these corrections.

Toyota contends that in the preliminary results of this review the Department applied BIA because it mistakenly held that Toyota had failed to comply with the Department's request for data incorporating the reallocations and corrections. Toyota claims that it did not provide such data because the Department never issued any instructions for doing so.

Toyota therefore, proposes that the Department use data on the record to make the correct reallocations and corrections for ocean freight, U.S. coop advertising, value-added, and Toyota Automatic Loom Works, Ltd. (TAL) ISE.

Petitioners assert that the Department specifically requested that Toyota submit corrections and reallocations in its supplemental questionnaire. Petitioners state that Toyota failed to submit this data as requested, but rather advised the Department that it would await the Department's decisions on these issues in the first administrative review before submitting a complete response.

*Department's Position:* We agree with Toyota. In our supplemental questionnaire dated May 23, 1991, we requested Toyota to provide within a specified period of time a narrative explanation of its claimed adjustments to price after publication of the preliminary results.

For the final results, we did not request additional information for ocean freight, TAL ISE, and value-added because we recalculated these expenses using information previously submitted by Toyota. See Comments 5, 7, and 8, respectively. We did request supplemental information for coop advertising. See Comment 6.

*Comment 5:* Toyota claims that the Department's BIA recalculation of ocean freight and marine insurance is overstated because the Department misunderstood documents provided by Toyota in conjunction with sales preselected by the Department for a mini-verification of sales in Washington, DC prior to, or perhaps in lieu of, an on-site verification. One of the sales involved a forklift which had a "mast swap" in the United States. In other words, the truck was imported with one mast, but, prior to sale in the U.S., the mast was switched with that of another imported truck. Toyota provided one invoice, marked "chassis" showing the truck as imported, including its original mast, and a second invoice, marked "mast" for another truck, which included the mast which was subsequently fitted onto the first truck. Toyota contends that the Department erroneously calculated a per-truck ocean freight expense by adding the amounts on the two invoices, thereby yielding a per-unit figure for ocean freight equal to ocean freight for two trucks.

Toyota argues that the Department requested pre-verification documents, not explanations of these documents, and that the documents were only provided to establish a paper trail for importation of the truck and not for calculation of ocean freight.

Toyota requests that the Department recalculate ocean freight based on one invoice or the other, or perhaps an average, but not on two per-truck amounts added together. Toyota maintains that its original allocation of ocean freight is accurate and should be incorporated in the final results.

*Department's Position:* We agree with Toyota. For the final results of review, we have recalculated the ocean freight expenses by averaging the invoices together to derive the per unit expense.

*Comment 6:* Toyota notes a discrepancy between statements by the Department in the notice of preliminary results and the actual BIA used to calculate sale-by-sale U.S. coop advertising expenses. The notice of preliminary results states that the Department used the amounts Toyota reported for the first administrative review as U.S. coop expenses. See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review (Forklifts I), 57 FR 3164 (January 28, 1992). Toyota observes that the Department actually used the largest single reported U.S. coop expense from the second review and applied it to all sales as BIA. Toyota requests that the Department use instead the per-customer coop expense from the first administrative review, as described in the preliminary notice. Toyota maintains, however, that the appropriate allocation of this expense is over all sales, rather than by dealer.

Petitioners contend that the BIA based on information from the second, rather than the first, administrative review is reasonable because it is based on data that is on the record in this proceeding. Accordingly, petitioners argue that the Department should continue to apply the largest single reported U.S. coop expense from the second review to all sales.

*Department's Position:* In a supplemental questionnaire dated May 23, 1991, we requested that Toyota allocate by dealer U.S. coop advertising expenses on a sale-by-sale basis. In a letter dated March 30, 1992, we again requested that Toyota recalculate U.S. coop advertising expenses by dealer. On April 13, 1992, Toyota submitted this information in an acceptable form, and we have used it in lieu of BIA for the final results.

*Comment 7:* Toyota claims that in calculating the TAL ISE incurred with respect to U.S. sales in Japan, the Department should have applied the ISE ratio to the TAL selling price, not to the much higher selling price of Toyota Motor Sales (TMS) in the United States. Because the Department applied the ISE ratio to the wrong value, it greatly overstated the expense.

Toyota further contends that, as is evident from the information submitted and verified in the first review, TAL incurred the identical category of indirect selling expenses for HM sales as for U.S. sales. Toyota states that if the Department deducts TAL indirect selling expenses from U.S. price, it must also in fairness deduct the same category of expenses from HM price.

*Department's Position:* We agree with Toyota that in the preliminary results we incorrectly calculated ISE incurred in Japan by TAL with respect to U.S. sales. For the final results, we have applied the ISE factor to the reported transfer price between TAL and TMS instead of to TMS' reported selling price in the United States. We have made a corresponding adjustment for TAL's ISE incurred on HM sales.

*Comment 8:* Toyota contends that the Department erred in calculating an offset to value-added expenses for income and profit earned from other business ventures. Toyota explains that the Department reduced general and administrative (G&A) expenses associated with value-added activity by an amount for net income and profit from other business ventures that greatly exceeded that reported in its questionnaire response. Toyota requests that the Department revise its income "offset" calculation for the final results to reflect the information contained in its questionnaire response.

*Department's Position:* We agree with Toyota. For the final results, we have revised the offset calculation to reflect accurately the amounts reported for net income and profit from other business ventures in Toyota's questionnaire response.

*Comment 9:* Toyota claims that the Department incorrectly calculated U.S. credit expenses by using an intra-company interest rate and not a rate based on its actual cost of borrowing

from unrelated sources. Specifically, in calculating credit expenses, the Department used the interest rate paid by TMS to Toyota Motor Credit Corporation (TMCC), its related finance company. As a result, Toyota argues that the Department created a fictional "expense" that is based on an internal transaction between TMS and TMCC which is irrelevant to the dumping analysis. Toyota urges the Department to use the interest rate paid by TMCC on its short-term borrowings to calculate credit expenses for sales by TMS because the rate paid by TMCC reflects Toyota's actual cost of financing from unrelated sources.

Petitioners disagree, arguing that the interest rate paid to outside sources by TMCC does not account for the total cost actually incurred by TMCC to extend credit to TMS. Petitioners note that TMCC incurs expenses to obtain funds to finance its operations as well as numerous operating expenses. It would, therefore, be inappropriate to base credit expenses for TMS simply on the short-term interest rate paid by TMCC to outside sources without accounting for the additional expenses incurred by TMCC to extend credit on sales made by TMS.

*Department's Position:* We disagree with Toyota. For the final results, we calculated U.S. credit expenses based on the experience of the sales division of Toyota. Because TMS is the selling division in the United States, not TMCC, we determined that the interest rate that should be used in the calculation of credit expense is one based on TMS' experience. Because TMS does not have any short-term loans from unrelated sources, we have used the interest rate that TMCC charged TMS to reflect the credit expenses incurred on U.S. sales. This approach is consistent with the credit expense methodology used in the previous administrative review.

*Comment 10:* Petitioners claim that Toyota did not report certain direct magazine advertising expenses incurred on U.S. sales. Petitioners state that these expenses consist of advertisements in national industry publications that were directed at end-user customers of Toyota's U.S. forklift dealers, and refer to the Toyota Industrial Equipment Division (TIE) of Toyota Motor Sales, U.S.A., Inc. Petitioners propose recalculating Toyota's direct U.S. selling expenses to include these advertising expenses. Petitioners suggest that the Department divide Toyota's reported cost for magazine advertisements during the period of review (POR) by the number of forklifts sold in the U.S. over the POR, and add this amount to U.S. direct selling expenses for each forklift.

Toyota acknowledges that these magazine advertising expenses were classified as direct expenses by the Department in the first review. See Forklifts I. However, respondent claims that petitioners' proposed recalculation of these expenses is incorrect. Toyota notes that these expenses are specifically identified in its questionnaire response and, therefore, should be separated out from reported ISE and reclassified as direct selling expenses.

*Department's Position:* We agree with both petitioners and Toyota that these magazine advertising expenses should be properly classified as direct selling expenses. However, we disagree with petitioners' contention that Toyota failed to report such expenses. Toyota did report these expenses under ISE in its questionnaire response. Thus, for these final results, we deducted the amount of magazine advertising expenses identified by Toyota from reported ISE and reclassified such expenses as direct selling expenses.

*Comment 11:* Petitioners claim that Toyota did not report the cost incurred to retrofit its forklifts with redesigned seats under its operator restraint safety seat ("ORS") program. In support of this contention, petitioners have submitted a Toyota advertisement, which petitioners claim offers free installation of new winged safety seats and seat belts to end-users of subject merchandise.

Petitioners argue that all costs incurred under this program, including the cost of all advertisements, the cost of the new seats, and the costs incurred to install the seats, should be considered direct U.S. selling expenses. Petitioners assert that absent submission of proper information by Toyota, the Department should use the total ORS costs reported by Toyota for the first administrative review and allocate those costs to sales during this review.

Toyota maintains that the retrofit expenses referred to by petitioners were incurred solely for forklift trucks imported and sold prior to the first period of review. Toyota notes that petitioners' argument erroneously implies that the Department included retrofit expenses in its margin analysis for the first review. Respondent states that the Department's first review verification report confirms that all trucks imported and sold during the first administrative review period were manufactured with an ORS, thereby obviating the necessity of retrofittings.

*Department's Position:* We agree with Toyota. Because there is no evidence on the record indicating that forklifts sold during the POR required retrofitting, we determine that no adjustment is required. The advertisement submitted by petitioners makes no reference to products sold during the POR. Petitioners have thus provided no evidence that Toyota incurred any such expenses with respect to the Toyota sales made in the current POR.

*Comment 12:* Petitioners claim that Toyota failed to report U.S. product demonstration expenses, which were categorized by the Department as direct selling expenses in the first review. Petitioners argue that Toyota should therefore be required to provide its U.S. demonstration expenses for the final results. Petitioners assert that absent a proper submission from Toyota, the Department should assume as BIA that the per unit product demonstration expenses in the United States are equal to the per unit demonstration expenses reported by Toyota for its HM sales.

Citing 19 CFR 353.56(a)(2) and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Administrative Review (AFBs I), 56 FR 31692, 31725 (July 11, 1991), Toyota maintains that it correctly categorized product demonstration expenses incurred in the United States as ISE. Toyota claims that demonstration expenses incurred in the United States were incurred in demonstrating forklifts to Toyota's national account customers. In contrast, Toyota states that demonstration expenses incurred in the HM, which were reported as direct selling expenses, were incurred in demonstrating forklifts to dealers so that they could demonstrate new models to *their* customers.

*Department's Position:* We disagree with petitioners that Toyota failed to report U.S. product demonstration expenses. By letter of March 30, 1992, we requested that Toyota separately report total demonstration expenses and allocate the same per forklift truck. In its response dated April 6, 1992, Toyota claimed that it reallocated such expenses using the ratio of forklifts under investigation to all units as reported in Exhibit C.4.i.1, page 2 of its December 5, 1990 response. However, after reviewing the calculation, we determined that Toyota did not actually use this ratio. Thus, we corrected Toyota's allocation for the final results.

We agree with petitioners that demonstration expenses incurred in the United States should be categorized as direct selling expenses because in both the HM and the United States, Toyota incurs demonstration expenses in order to make sales to end-users. Toyota's

citation to AFBs I is irrelevant because AFBs I does not offer a clear statement of policy with regard to demonstration expenses. Absent evidence that demonstrations serve different purposes in different markets, we determine that Toyota's U.S. demonstration expenses should be treated as direct selling expenses. See Forklifts I.

*Comment 13:* Petitioners contend that Toyota did not include certain U.S. customs fees (merchandise processing fee and harbor maintenance fee) in its reported movement charges. Petitioners state that the merchandise processing fee was 0.17 percent of entered value and the harbor maintenance fee was 0.04 percent of entered value during the period of review. For the final results, petitioners request that the Department increase Toyota's reported movement charges by these amounts for all of Toyota's U.S. sales.

Toyota argues that it appropriately reported such fees under brokerage and handling expenses.

*Department's Position:* We agree with Toyota. These expenses are included in respondent's reported brokerage and handling expenses. Therefore, no adjustment is necessary.

*Comment 14:* Petitioners claim that the Department should resort to BIA in determining the amount of certain U.S. inland freight costs incurred on sales made after May 1, 1990 that Toyota failed to report.

Toyota agrees with petitioners that it failed to report certain inland freight costs incurred on sales made during May of 1990 and that the Department should account for such costs in its final analysis.

*Department's Position:* All parties concur that Toyota failed to report certain U.S. inland freight costs for May 1990. For the final results we therefore used Toyota's highest reported inland freight as BIA.

*Comment 15:* Petitioners claim that Toyota understated its U.S. value-added labor and overhead costs. Petitioners' reason for this assertion is based on proprietary information. Petitioners request that the Department use the data in Attachment 4 of petitioners' case brief to correct these costs.

Toyota agrees that the labor cost portion of the labor and overhead variable has been miscalculated due to a computer programming error, but that the overhead portion is correct.

*Department's Position:* We agree that the labor portion of the "labor and overhead" variable was improperly calculated, and have made the necessary corrections, as described by Toyota, for the final results. We agree with Toyota that overhead was both properly calculated and properly included in the calculation of the labor and overhead variable. For a complete discussion of this issue, please refer to the analysis memorandum.

*Comment 16:* Petitioners state that Toyota reported negative amounts for net selling price proxy 3 (which Toyota states represents switching operations performed in TIE processing centers and includes other U.S. expenses and profit) on many of its ESP sales. Petitioners note that these negative amounts always occur when Toyota reports a negative value for the variable manufacturing cost of options switched by TIE.

Petitioners argue that these facts, in addition to other proprietary information, indicate Toyota assumed negative U.S. value-added expenses on any sale for which the cost of the options removed from the forklift by TIE exceeded the cost of options installed by TIE. Petitioners contend that Toyota incurs actual expenses to operate its value-added facilities and to perform switching operations. They state that, for example, removing the forks from an imported forklift results in an actual expense rather than a negative expense to TIE. Petitioners request that the Department correct the negative costs and expenses reported by Toyota for net selling price proxy 3 by using the absolute values of the negative amounts reported by Toyota.

Toyota contends that petitioners misinterpreted Toyota's value-added calculation. Toyota explains that labor and overhead are always positive; however, if the value-added materials are negative and are added to labor and overhead, the value-added will be increased, but remain negative.

*Department's Position:* We agree with Toyota. While the reported amount for value-added and switching operations is negative, Toyota accounted for its expenses of labor and overhead in its calculation. For further discussion of respondents' further processing operations and the potential for negative value-added, refer to the discussion of TCM's further processing in Comment 20 below.

*Comment 17:* Petitioners argue that Toyota's claimed credit revenue for its U.S. sales should be rejected because the credit revenue for certain sales is actually earned on sales by unrelated dealers to end-user customers and not on the sale from Toyota to the unrelated dealer. Petitioners state that Toyota sells forklifts in the United States to unrelated dealers and that the first unrelated sale is the sale from Toyota to the dealer. Petitioners contend that the purpose of this review, as stated in the questionnaire, is to examine sales by Toyota to the first unrelated customer. Petitioners argue that credit revenue earned on sales from the unrelated dealer to the end-user, which are financed through TMCC, is therefore irrelevant to this review, because the financing arranged by TMCC is a separate transaction from the sale of the forklift.

Toyota argues that TMCC retains both the title to, and the Uniform Commercial Code (UCC) interest in, the forklift until TMCC receives payment from either the dealer or end-user. Toyota contends that a shift in the credit transaction from the dealer to the end-user is no more than a shift in the source of payment. In both cases, TMCC retains ownership and the UCC interest in the forklift. Because Toyota retains a direct relationship with the dealer or end-user, the credit revenue is directly related to the sale of the forklift, and therefore, the credit transaction should be adjusted for. Toyota further contends that its ability to sell forklifts is contingent upon its ability to encourage end-users to buy forklifts. Toyota notes, for example, that the Department considers its subsidies of yellow page advertisements for dealers a direct selling expense. Toyota's provision of favorable financing to end-users similarly is intended to encourage end-user sales, which in turn create sales to dealers. Toyota concludes by noting that it would be unfair and illogical to account for TMCC's credit expense and not its revenue.

*Department's Position:* In accordance with section 353.41 of the Department's regulations, we used the price to the first unrelated purchaser in the United States as the basis of U.S. price. Toyota's USP was based on the price TMS/TIE charged its unrelated dealers. Therefore, we consider revenue generated as a result of the sale by the dealer to the end-user through a financing arrangement a separate transaction, and as such, not directly associated with the sales under review, as claimed by Toyota. This credit arrangement is unlike Toyota's subsidy for yellow pages advertisements, which is properly treated as a direct selling expense. That TMCC retains both the title to, and the UCC interest in, the financed forklift until TMCC receives the final payment from the end-user has no bearing on the calculation of USP. Finally, we note that, contrary to Toyota's assertion, we are not accounting for TMCC's credit expense. We therefore disallowed the claimed adjustment for credit revenue for the sales financed by the end-user.

*Comment 18:* Petitioners contend that the Department should not have deducted Toyota's HM advertising costs

as a direct selling expense for PP comparisons. Petitioners contend that the Department should follow its practice in the first review and treat these expenses as ISE.

Toyota does not believe that the Department applied the correct legal test for determining whether these advertising expenses are direct or indirect. Toyota submits that these expenses, incurred on behalf of Toyota's customers, are direct and should therefore be deducted from FMV in PP comparisons.

*Department's Position:* We agree with petitioners. These advertising expenses are indirect because they are not directed at Toyota's customer's customer. In the first administrative review, we determined that these advertising expenses were indirect selling expenses. See Forklifts I, Comment 18. The data submitted in this proceeding is very similar to that submitted and disproved during verification in the previous administrative review. We have no compelling evidence on the record in this proceeding which indicates that the situation is any different from that found previously. We have therefore continued to treat these HM expenses as ISE and have not deducted them from FMV in PP comparisons.

*Comment 19:* Petitioners claim that Toyota failed to support adequately its claim concerning credit expenses incurred by Toyota on PP sales. Petitioners state that, for reasons based on proprietary information, the claimed method of payment used with respect to these sales is incorrect. Petitioners assert that, accordingly, the Department should use BIA with respect to this expense for the final results. According to petitioners, the Department should also consider associated bank charges in determining this BIA. Petitioners state that bank charges should be among several elements considered in this BIA. Petitioners provide a calculation, using data from Toyota's ESP response, of the average time between the date the forklifts were exported from Japan and the date the forklifts were imported into the United States. Petitioners contend that this calculation represents the best method for imputing Toyota's credit expense for PP sales.

Toyota asserts that, because of the immediate payment term on PP sales, there is no credit expense, as concluded by the Department in Forklifts LTFV and Forklifts I, which included two verifications. Toyota states that the Department should not change its practice in this administrative review.

*Department's Position:* We agree with petitioners that reported credit expenses are incorrect. Although Toyota's PP sales are made on immediate payment terms (immediate with respect to the date of delivery in the United States), Toyota still incurs some credit expense on these transactions for the time between shipment and payment. An expense must therefore be imputed on PP sales for the time between shipment from Japan and payment. Because entry dates are unavailable, we used the average number of days between shipment and payment calculated by petitioners in their case brief. Petitioners' figure is based on data provided by Toyota. However, we have no information on the record indicating that Toyota incurred bank charge fees associated with the immediate payment PP sales and, thus, we cannot make an adjustment for such fees.

*Comments Specific to TCM*

*Comment 20:* TCM objects to the Department's allocation of selling, general and administrative expenses (SG&A) over U.S. further manufacturing cost in cases involving "swap-downs" of masts (substitutions of low-value masts for masts of higher value). In such situations, TCM has allocated a negative SG&A amount to further manufacturing. In the Department's preliminary results ESP computer program, wherever a negative amount was reported for the further manufacturing SG&A expense, this amount was multiplied by negative one in order to convert it to a positive value. TCM claims that these negative amounts should not have been converted to positive amounts because the SG&A expenses that were allocated to the import values were inflated so as to include an offset amount equal to the absolute value of the negative value-added SG&A amounts. As a result, according to TCM, the amount of total U.S. SG&A deducted from USP has been inflated well beyond the total actual expense incurred. TCM requests that the Department correct this problem in the computer program so that only the actual SG&A expenses will be deducted from U.S. price.

Petitioners argue that the Department should recalculate TCM's value-added using positive U.S. SG&A amounts for those U.S. value-added sales where TCM listed negative SG&A amounts. Petitioners state that it is not possible to have negative labor, factory overhead, or SG&A from value-added operations. Petitioners suggest applying the highest reported SG&A amount to these sales as BIA or, in the alternative, assigning a positive value to all SG&A expenses.

Petitioners also argue that, despite the arguments in its brief, TCM has not offered support for its contention that TCM allocated the total U.S. SG&A amount, plus an offsetting increase, to the truck as imported for those sales where it allocated negative SG&A in further manufacturing. Petitioners also contend that there is insufficient information (i.e., calculation of total SG&A, or identification of the field where the SG&A amount allocated to the value of the truck as imported is recorded) on the record for the Department to verify TCM's claim. Finally, petitioners claim that TCM's use in its case brief of a hypothetical—rather than an actual—example is not sufficient. Petitioners, therefore, contend that the Department should continue to use the same methodology for allocating U.S. SG&A to U.S. further manufacturing costs that was used for the preliminary results.

*Department's Position:* We agree with petitioners that it is not appropriate to attribute negative SG&A expenses to further processing operations. However, in the preliminary results, our treatment of SG&A understated the value of TCM's imported product and overstated TCM's value-added for those products for which TCM reported negative SG&A. As a result of these over- and under-statements, we have decided not to follow the methodology employed in Forklifts I and in the preliminary results of this review.

Two facts must be considered in determining how to treat TCM's reported negative SG&A properly. First, the processing that TCM undertook must result in the allocation of positive SG&A expenses both to the imported product and to the further processing operations conducted by TCM. Second, the sum of the SG&A allocated to TCM's imported product and TCM's value-added must be equal to the amount incurred.

Therefore, we have allocated a portion of TCM's SG&A expenses to the COM of the further processing operations and deducted this amount from USP. The COM of the further processing operations is the sum of the cost of all materials added to the forklift truck, plus the labor and factory overhead costs incurred by TCM. The remaining SG&A amount, which we attributed to the imported product, was not deducted. This allocation distributes the actual amount of SG&A expense incurred between further manufacturing and the imported product. This methodology therefore results in an allocation of positive SG&A to both the further manufacturing operations and the imported product. The amount allocated to the imported product also does not exceed the amount incurred for the sale.

To do this, we calculated on a sale-by-sale basis the factor represented by TCM's reported SG&A as a share of the total reported manufacturing costs associated with further manufacturing (*i.e.*, positive and negative values). We then used this factor, which was always positive [1], to generate an SG&A amount for each transaction by applying the factor only to the positive costs associated with further manufacturing. We thereby guaranteed that the SG&A value attributed to further manufacturing was always positive.

Under this methodology we succeed both in allocating an amount for SG&A expense equal to that incurred by TCM, and in attributing a positive value for SG&A expenses to all TCM's further processing operations, *i.e.*, including cases of "swap-downs" of masts (substitutions of low-value masts for masts of higher value).

*Comment 21*: TCM argues that, in the ESP program, for situations in which FMV is based on constructed value (CV), the Department neglected to deduct direct selling expenses from FMV. TCM argues that such an adjustment is in accordance with the Department's longstanding practice. TCM cites section 772(e) of the Tariff Act and 19 CFR 353.41(e); Tapered Roller Bearings from Japan (52 FR 30700, August 17, 1987); Cellular Mobile Telephones and Subassemblies from Japan (50 FR 45447, October 31, 1987); and Spun Acrylic Yarn from Italy (50 FR 35849, September 4, 1985).

Petitioners assert that the Department must first define the direct selling expenses variable before a COS adjustment can be made, noting that the variable was not defined in either the Department's January 29, 1992 ESP program or in a memorandum dated February 5, 1992. Petitioners claim that, if the direct selling expenses variable is not defined, neither the respondent nor petitioners will be able to verify that the correct COS adjustments were made.

*Department's Position*: We agree with TCM. We were satisfied with the respondent's reporting of direct and indirect selling expenses as submitted. Therefore, we have made a COS adjustment using the direct selling expenses variable.

*Comment 22*: TCM argues that the Department incorrectly accounted for credit income earned on U.S. sales in PP comparisons. According to TCM, the Department added credit income earned on U.S. sales to both USP and FMV, despite the fact that credit income is realized on U.S. sales only. Accordingly, TCM requests that the Department revise its calculations to eliminate the addition to FMV of credit income earned on U.S. sales for these final results.

*Department's Position*: We agree with TCM and have eliminated the addition of credit income to FMV for these final results.

*Comment 23*: Petitioners argue that verification of TCM's cost data is necessary because this data has never been verified. Petitioners state that TCM's cost data was neither verified in the investigation, because the cost data was not accepted, nor in the first administrative review, due to the outbreak of the Persian Gulf War. Petitioners assert that good cause for verification still exists and is shown by petitioners' April 9, 1991 letter to the Department, which petitioners claim documents extensive discrepancies in TCM's unverified cost data. Accordingly, petitioners claim that the Department should conduct verification of TCM's cost information prior to issuing its final results.

TCM replies that the Department is not required to conduct verification of TCM's COP data in this review. According to TCM, the Department is required to conduct verification in an administrative review only if an interested party files a timely request for verification and if the Department has not conducted a verification during the two immediately preceding reviews. TCM also notes that the Department is not required to verify all sections of a respondent's questionnaire response. In this context, TCM argues that the Department satisfied these requirements in the previous review by conducting verification of TCM's HM and U.S. sales, and further manufacturing expenses. Because the Department was able to verify TCM's information in the previous review, TCM argues that no further verification is necessary in this review.

*Department's Position*: With respect to administrative reviews, the Department is required to verify information under section 776(b)(3) of the Tariff Act if the Secretary concludes that good cause for verification exists, or if a timely request for verification is received from an interested party and the Department has not conducted a verification during either of the two immediately preceding administrative reviews. The current administrative review is the second review of the antidumping order in this case. Thus, verification is not required under section 776(b)(3) of the Act. TCM's HM sales, U.S. sales and U.S. costs, including value-added cost data from TCM's related facilities in the United States, were verified in the previous administrative review. The Department determined that TCM's data reporting methodology was sound and reliable.

Because verification was not required and all other aspects of TCM's sales were successfully verified in the previous review, because our analysis of TCM's response did not indicate any significant discrepancies, and because petitioners did not make a compelling case that TCM's data was seriously flawed, we determined that presently there was no good cause to verify TCM's submitted cost data.

*Comment 24*: Petitioners argue that for the final results, the Department should revise the method it used to adjust for commissions on TCM's sales. For PP transactions, petitioners submit that the commission offset rule directs the Department to reduce USP by the lesser of the HM commission or U.S. ISE when commissions are paid in one market and not in the other. Petitioners contend that TCM failed to report ISE for its PP sales and that the Department should accordingly deny the commissions claimed by TCM for its HM sales.

With respect to ESP transactions, petitioners state that the preliminary margin program incorrectly deducted all HM commissions from HM price and all U.S. commissions from USP. Petitioners state that commissions should be deducted from both home market price and U.S. price only with respect to ESP comparisons that include a commission in both transactions.

TCM responds that the special rule governing commission offsets does not require that commissions be paid on every sale in both markets. Rather, TCM contends that this rule applies only when no commissions are paid on any sales in one of the markets under consideration. Because TCM pays commissions on certain sales in both markets, TCM concludes that the Department should continue to treat commissions as direct selling expenses in both the U.S. and home markets, and thereby not employ the offset rule in comparisons in which commissions are incurred in only one transaction.

*Department's Position*: Petitioners' assertion that TCM failed to report U.S. ISE on PP transactions is incorrect. For the final results, we modified our PP computer program to deduct HM commissions from FMV and then offset them by adding U.S. ISE up to the amount of the HM commissions.

[1] This factor will always be positive because TCM always assigned a negative SG&A to the negative total manufacturing costs associated with the further manufacturing of the swapdown models. The negative SG&A divided by the negative total COM yields a positive factor.

With regard to ESP sales, we agree with petitioners to the extent that the mere existence of commissions on some sales in both markets does not automatically preclude the use of the offset rule. Our standard practice requires that for comparisons involving ESP for which a commission is incurred in both markets, we deduct the U.S. commission from ESP and the HM commission from FMV. For comparisons in which there is a commission paid in one market and none in the other market, we offset the commission with ISE incurred in the other market, to the extent of the lesser of the commission in the one market or the ISE in the other. In order to follow this standard practice, we have modified our ESP computer program for the final results because, in our preliminary results calculations, we did not offset the commission with ISE for comparisons in which a commission was paid in one market and not in the other.

*Comment 25*: Petitioners contend that TCM's HM commission sales are outside the ordinary course of trade because they were unusual and infrequent, as stated by TCM in its June 24, 1991 questionnaire response. Petitioners argue that the Department should accordingly exclude TCM's HM commission sales from FMV.

*Department's Position*: We disagree that TCM's HM commission sales are outside the ordinary course of trade. TCM paid commissions to both related and unrelated dealers on TCM's sales to end-users. Although sales to end-users constitute a very small portion of TCM's HM sales, and are included as comparison models, these end-users are TCM's usual commercial customers. As a result, we consider them to be in the ordinary course of trade.

*Comment 26*: Petitioners contend that HM transactions that have shipment dates prior to March 1, 1989 are not within the relevant reporting period (March 1, 1989 to July 31, 1990) and therefore should be disregarded for comparison purposes. Petitioners note that the questionnaire states that "[t]here can be no new dates of sale after shipment and any subsequent price modifications must be reported as either a rebate or a discount." Petitioners further contend that TCM's response supports the use of shipment date as the appropriate date of sale, because it states that the date of sale is equivalent to the estimated date of receipt by the customer. In the interests of consistency, petitioners also suggest matching U.S. sales to HM sales on the basis of shipment dates.

In response, TCM argues that the date of sale, rather than the date of shipment, determines the reporting period for HM sales. TCM further argues that, in accordance with Department practice, TCM reported as the date of sale the date on which the parties were bound by the terms of sales. Because TCM followed the Department's requirements in determining dates of sale and reporting HM sales, and because the Department did not request from TCM additional information regarding sale dates, TCM concludes that the Department should not revise its reporting requirements for HM dates of sale.

*Department's Position*: We agree with petitioners. Any given sale cannot have a date of sale later than the date of shipment to the customer. Any adjustments to price or quantity that take place after the date of shipment must be reported as discounts or rebates, in the case of changes in price, or quantity adjustments in the case of changes in quantity.

We have therefore used the HM date of shipment as the date of sale instead of the date of delivery, which TCM reported as the date of sale. We analyzed these HM shipment dates in order to determine whether they met our criterion for contemporaneity with regard to matching to the U.S. sale dates. We found that all but two of TCM's proposed matches were suitably contemporaneous, and that these transactions were only used for matching with two ESP sales. We assigned these two sales the weighted-average dumping margin calculated for ESP sales.

*Comment 27*: Petitioners claim that TCM failed to include the G&A expenses of one of its related subsidiaries, C. Itoh Industrial Machinery Inc. (CIM). Petitioners state that TCM calculated a G&A factor for U.S. ISE but failed to apply this factor to the selling price and, therefore, did not include an amount for the G&A portion of U.S. selling expenses in its reported sale-by-sale ISE.

TCM responds that it reported the expenses in question in accordance with the Department's instructions. According to TCM, it initially reported all SG&A expenses that it incurred in the United States as either direct or indirect selling expenses. The Department subsequently requested, however, that TCM segregate G&A from selling expenses, and allocate the G&A expenses to TCM's U.S. further processing operations. Thus, TCM asserts that petitioners' argument is incorrect because the expenses in question are included, at the Department's request, in TCM's further manufacturing submissions.

*Department's Position:* We agree with petitioners. The G&A expenses in question pertain to all of TCM's U.S. sales of subject merchandise, regardless of whether the merchandise is further processed in the United States. Because these G&A expenses are applicable to all U.S. sales, we have included them in our calculation of U.S. ISE for these final results.

*Comment 28:* Petitioners claim that there are two errors in the U.S. ISE that TCM reported for sales by another related subsidiary, Mitsui Machinery Distribution, Inc. (MMD). First, petitioners claim that sale-by-sale ISE shown in TCM's sales listing does not reconcile with the formula provided by TCM (ISE factor x net price). In particular, petitioners state that the amounts reported for certain ESP sales are lower than the amount that results from applying the formula. Petitioners request that the Department recalculate this expense using the formula provided by TCM.

Second, petitioners claim that TCM failed to report an amount for MMD's G&A in TCM's reported ISE. Petitioners request that the Department allocate a portion of the "General G&A" reported by TCM to MMD's forklift truck sales to derive a G&A ratio for MMD, then multiply this factor by net sales price for each of MMD's sales to compute G&A expenses for each sale.

*Department's Position:* We agree with petitioners that TCM did not calculate a G&A factor for MMD. We have corrected this omission using the factor, calculated using TCM's data, provided by petitioners in their case brief because this factor offers a reasonable estimate of MMD's G&A expenses.

We disagree that TCM failed to calculate properly the amounts reported for ISE on MMD's sales. In reviewing petitioners' Attachment 4 to the case brief, we found that petitioners included an incorrect amount for dealer inspection/prep charge and that petitioners did not, as TCM's sample calculation showed, allocate a portion of the ISE to U.S. value-added. After adjusting petitioners' calculations in Attachment 4 to account for the correct dealer inspection/prep charge and the ISE reported in U.S. value-added, we found that for the calculations sampled, the results matched the amounts calculated and reported by TCM.

*Comment 29:* Petitioners argue that for two sales, TCM did not recalculate, as requested by the Department in its supplemental questionnaire, certain value-added costs. Therefore, petitioners assert that the Department

should use the highest costs reported by TCM for these expense categories as BIA.

*Department's Position:* We agree with petitioners. For the final results, we used the highest costs reported by TCM for these expense categories as BIA.

*Comment 30:* Petitioners contend that TCM's brokerage expenses are understated because the brokerage allocation factor (total brokerage costs for U.S. forklift sales divided by total revenue from U.S. forklift sales) was multiplied by transfer price instead of sales price. Petitioners request that the Department recalculate this expense by multiplying the brokerage factor by sales price.

TCM replies that the total revenue over which it allocated brokerage expenses was the revenue of TCM's factory in Japan, which represents the aggregate of all TCM's transfer prices. Because it calculated its brokerage expense factor by allocating brokerage expenses over transfer prices, TCM argues that it is appropriate to calculate per-unit brokerage expenses by multiplying this expense factor by TCM's reported transfer prices.

*Department's Position:* We agree with TCM. We find TCM's allocation method for calculating Japanese brokerage charges to be reasonable. TCM calculated a factor by dividing total Japanese brokerage paid on its exports of forklift trucks to the United States by the total transfer prices (revenue recorded by the factory at Shiga) of the forklifts exported to the United States. Because the Japanese brokerage charges would have been paid on the basis of the transfer price, it is reasonable that TCM would use this in the denominator of the allocation equation.

*Comment 31:* Petitioners state that TCM failed to report the actual trading company expense incurred for one sale. Petitioners contend that the Department should treat this expense as a movement expense, in accordance with the first review, and should assign the highest reported trading company markup as BIA for this observation.

TCM argues that petitioners misunderstand TCM's method for calculating trading company markups. According to TCM, it pays trading companies a single fee that includes movement expenses incurred by the trading companies and the trading companies' markup. In its response, TCM separately reported the movement expenses and the markup; the total of these items represented the single fee that TCM paid to the trading company. In those instances in which the trading company markup is negative, the actual movement expenses incurred by the trading company exceed the fee that the trading company receives from TCM; thus, the negative markup reported by TCM is a downward adjustment to actual movement expenses, paid by the trading company, to reflect the amount paid by TCM. Because TCM's reporting method is accurate and is based on actual expenses, TCM asserts that the use of BIA is unwarranted. Should the Department determine to reject TCM's negative trading company markup, TCM requests that the Department set any negative amounts equal to zero, in order to reflect the actual movement expenses incurred by the trading companies.

*Department's Position:* As in the first review, we treated the trading company markups as a movement charge. The appropriate deduction to USP for inland freight is the expense incurred by TCM. Because the addition of the negative markup yields the actual expense incurred by TCM for this sale, we have, for the final results, recalculated inland freight using TCM's submitted data.

*Comment 32:* Petitioners contend that interest income claimed by TCM from long-term installment sales may have been earned on sales from TCM's unrelated dealers to end-users rather than on sales from TCM to its dealers, and as such should not be added to the price of TCM's sales. Petitioners assert that installment sales are generally sales to end-users rather than to dealers. In addition, petitioners claim that TCM did not properly justify the interest rate it used in calculating this income.

TCM argues that the credit income at issue is earned by TCM itself, not by its dealers. TCM further argues that such income is a legitimate increase to U.S. price, because it is agreed to by the customer at the time of sale. Therefore, TCM claims that the Department should continue to add credit income to U.S. price for the final results.

*Department's Position:* We disagree with petitioners. Concerning the issue of whether the installment sales in question were made by TCM to its unrelated dealers, as opposed to sales from the dealers to end-users, we have not found any evidence that these transactions did not concern sales by TCM to its dealers. We also do not have any evidence that TCM did not collect the credit income that it has reported, regardless of the interest rate that it charged. Therefore we have continued to add credit income to USP for the final results.

*Comment 33:* Petitioners, citing Color Picture Tubes from Korea (52 FR 44186, November 18, 1987), contend that TCM's U.S. advertising expenses are direct selling expenses because the advertisements are aimed at a purchaser who buys the merchandise from the first unrelated purchaser or from a subsequent purchaser, *i.e.*, the customer's customer. Petitioners further contend that a TCM advertisement submitted as Exhibit 6 of petitioners' case brief is proof that these expenses are direct advertising expenses because the advertisement: (1) specifically promotes internal-combustion forklifts subject to this review; (2) identifies TCM Manufacturing, USA, Inc., TCM America, Inc., and C. Itoh Industrial Machinery, Inc., as the source of the advertisement; and (3) does not refer to or promote specific TCM dealers.

Petitioners submit that TCM failed to support its claim that all of its U.S. advertisements were indirect selling expenses and state that the Department should therefore reject TCM's claim and treat all of the advertising expenses as direct expenses. Petitioners provide calculations for allocating this expense as a direct selling expense to forklifts sold through CIM and to forklifts sold through MMD.

In rebuttal, TCM argues that the only advertising expenses related to subject merchandise were for general corporate advertising, rather than advertising for specific products. TCM further argues that the advertising cited by petitioner does not relate to subject merchandise, because it concerns forklift trucks manufactured in the United States. Because TCM's advertising is either intended to promote the company as a whole, or is not related to forklift trucks produced in Japan, TCM concludes that the Department should treat TCM's U.S. advertising expenses as indirect selling expenses.

*Department's Position:* We agree with petitioners that these expenses are direct selling expenses because these advertisements, as evident from the examples submitted by TCM, are aimed at the ultimate consumer. We disagree with TCM regarding TCM's claim that the advertising in question is unrelated to subject merchandise because the trucks sold by TCM in the United States were in fact manufactured in Japan, and were, at most, customized through further processing in the United States. Therefore, we have treated these advertising expenses as a direct selling expense in the final results.

**Final Results of Review**

We determine the following percentage margins to exist for the period June 1, 1989 through May 31, 1990:

| Manufacturer/exporter | Margin percent |
|---|---|
| Toyota Motor Corporation | 6.87 |
| Toyo Umpanki Co., Ltd. | 4.48 |

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed companies will be the rates as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered by this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 39.45 percent. On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, Slip Op. 93–79 and *Federal Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty order for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 39.45 percent, the "all others" rate established in the amended final notice of the LTFV investigation by the Department (53 FR 20882, June 7, 1988).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1993.

**Barbara R. Stafford,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 94–506 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

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[C–333–502]

## Deformed Steel Concrete Reinforcing Bar From Peru; Determination Not To Revoke Countervailing Duty Order

**AGENCY:** International Trade Administration/Import Administration, Department of Commerce.

**ACTION:** Notice of determination not to revoke countervailing duty order.

**SUMMARY:** The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on deformed steel concrete reinforcing bar from Peru.

**EFFECTIVE DATE:** January 10, 1994.

**FOR FURTHER INFORMATION CONTACT:** Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On November 19, 1993, the Department of Commerce (the Department) published in the Federal Register (58 FR 61069) its intent to revoke the countervailing duty order on deformed steel concrete reinforcing bar from Peru (50 FR 48819; November 27, 1985).

Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On December 3, 1993, Florida Steel Corporation and Chaparral Steel Co., domestic producers and petitioners in the original investigation, objected to our intent to revoke the order. Accordingly, the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, and we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: December 30, 1993.

**Roland L. MacDonald,**

*Acting Deputy Assistant Secretary for Compliance.*

[FR Doc. 94–517 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

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## National Oceanic and Atmospheric Administration

[I.D. 010394B]

## Draft Fishery Management Plan for Corals, Plants, and Associated Invertebrates for Puerto Rico and the U.S. Virgin Islands

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings and request for comments.

**SUMMARY:** The Caribbean Fishery Management Council will hold public hearings on the Draft Fishery Management Plan for Corals, Plants, and Associated Invertebrates for Puerto Rico and the U.S. Virgin Islands (FMP).

**DATES:** Written comments on the draft FMP should be submitted on or before

February 15, 1994. See **SUPPLEMENTARY INFORMATION** for dates, time, and location of the public hearings.

**ADDRESSES:** Send written comments to Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, suite 1108, San Juan, Puerto Rico 0918–2577.

**FOR FURTHER INFORMATION CONTACT:** Miguel A. Rolón, (809) 753–6910.

**SUPPLEMENTARY INFORMATION:** The draft FMP proposes the following management measures: (1) Prohibit the harvest or possession of stony corals, whether dead or alive, except for legally permitted research, education, and restoration programs; (2) prohibit the harvest or possession of sea fans and gorgonians (octocorals) and any species in the fishery management unit if attached or existing upon live-rock, live or dead, except for legally permitted research, education, and restoration programs; (3) prohibit the sale or possession of any prohibited species unless the specimen entered the management area in interstate or international commerce and is fully documented as to point of origin; (4) prohibit the use of chemical, plants or plant-derived toxins, and explosives to harvest organisms in the coral fishery management unit, except for legally permitted research, education, and restoration programs; (5) limit harvest of fishery management unit organisms except for those listed in Appendix A, to hand-held dip-nets, slurp guns, hand and other non-habitat destructive gear, except for legally permitted research, education, and restoration programs; (6) require an annual permit to harvest or possess organisms in the fishery management unit; (7) require collectors, dealers, and exporters of species managed under the coral plan to acquire an annual permit, to submit monthly records and report harvest, shipments, and unit cost; and (8) establish a Marine Conservation District (MCD) in the exclusive economic zone, due south of St. John, U.S. Virgin Islands, within the coordinates specified below; no possession while moored, fishing, or harvesting of any organisms will be allowed in the MCD; no anchoring will be allowed in the MCD. Exceptions to the above restrictions are allowed for legally permitted research, education, and restoration programs.

PROPOSED COORDINATES FOR MARINE CONSERVATION DISTRICT

| Point | Latitude | Longitude |
|---|---|---|
| A ..... | 18°15.3′ N. | 64°46.9′ W. |
| B ..... | 18°15.0′ N. | 64°42.2′ W. |

PROPOSED COORDINATES FOR MARINE CONSERVATION DISTRICT—Continued

| Point | Latitude | Longitude |
|---|---|---|
| C ..... | 18°10.0′ N. | 64°42.2′ W. |
| D ..... | 18°10.0′ N. | 64°46.9′ W. |

All hearings will be held from 7 p.m. to 10 p.m. and are scheduled on the following dates at the following locations:

1. Tuesday, February 1, 1994—Conference Room, Legislature Building, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.
2. Wednesday, February 2, 1994—Boulon Center, Legislature Room, St. John, U.S. Virgin Islands.
3. Thursday, February 3, 1994—Conference Room, Legislature Building, Christiansted, St. Croix, U.S. Virgin Islands.
4. Tuesday, February 8, 1994—Conference Room, Hotel Antibes, Cabo Rojo, Puerto Rico.
5. Wednesday, February 9, 1994—Restaurant Mesón Criollo, Road 987 Km 3.2, Las Croabas, Fajardo, Puerto Rico.

Testimony may be presented at any of the hearings. Copies of the draft FMP are available (see **ADDRESSES**).

Dated: January 5, 1994.

**David S. Crestin,**

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

[FR Doc. 94–504 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–22–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China and Permanent Denial of Goods Exported in Excess of Import Restraint Limits in 1994

January 5, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits and notice of permanent denial of goods shipped in excess of the 1994 limits.

**EFFECTIVE DATE:** January 17, 1994.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in recent consultations between the Governments of the United States and the People's Republic of China on a mutually satisfactory solution regarding the extension of the bilateral textile agreement, including quota limits, illegal transshipment of textile products from China, overshipping annual limits, and other violations of the provisions of the bilateral agreement, the United States Government has decided to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994. The annual limits for January 1, 1994 through December 31, 1994 shall be effective January 17, 1994.

It should be noted that CITA, under Executive Order 11651, as amended, and section 204 of the Agricultural Act of 1956, as amended, intends to permanently deny entry to goods which have been shipped in excess of the 1994 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

January 5, 1994.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 17, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during

the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 200 | 463,566 kilograms. |
| 218 | 7,919,394 square meters. |
| 219 | 1,609,888 square meters. |
| 226 | 7,310,063 square meters. |
| 237 | 1,245,294 dozen. |
| 239 | 1,991,612 kilograms. |
| 300/301 | 2,694,290 kilograms. |
| 313 | 29,829,197 square meters. |
| 314 | 33,939,959 square meters. |
| 315 | 116,403,311 square meters. |
| 317/326 | 13,957,535 square meters of which not more than 2,670,351 square meters shall be in Category 326. |
| 331 | 3,539,461 dozen pairs. |
| 333 | 64,133 dozen. |
| 334 | 222,374 dozen. |
| 335 | 278,482 dozen. |
| 336 | 113,030 dozen. |
| 338/339 | 1,525,465 dozen of which not more than 1,157,995 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338–S/339–S[1]. |
| 340 | 603,342 dozen of which not more than 301,671 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340–Z[2]. |
| 341 | 482,186 dozen of which not more than 289,312 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341–Y[3]. |
| 342 | 188,380 dozen. |
| 345 | 83,037 dozen. |
| 347/348 | 1,556,789 dozen. |
| 350 | 109,122 dozen. |
| 351 | 354,168 dozen. |
| 352 | 1,159,137 dozen. |
| 359–C[4] | 395,659 kilograms. |
| 359–V[5] | 587,624 kilograms. |
| 360 | 5,073,230 numbers of which not more than 3,460,433 numbers shall be in Category 360–P[6]. |
| 361 | 2,864,699 numbers. |
| 363 | 21,823,736 numbers. |
| 369–D[7] | 3,230,177 kilograms. |
| 369–H[8] | 3,303,681 kilograms. |
| 369–L[9] | 2,170,919 kilograms. |
| 369–S[10] | 395,021 kilograms. |
| 410 | 1,440,098 square meters of which not more than 1,154,393 square meters shall be Category 410–A[11] and not more than 1,154,393 square meters shall be in Category 410–B[12]. |
| 433 | 16,947 dozen. |
| 434 | 9,656 dozen. |
| 435 | 17,736 dozen. |
| 436 | 11,036 dozen. |
| 438 | 19,312 dozen. |
| 440 | 27,590 dozen of which not more than 15,765 dozen shall be in Category 440–M[13]. |
| 442 | 30,743 dozen. |
| 443 | 99,320 numbers. |
| 444 | 147,656 numbers. |
| 445/446 | 184,452 dozen. |
| 447 | 57,398 dozen. |
| 448 | 16,135 dozen. |
| 607 | 2,169,081 kilograms. |
| 611 | 3,707,576 square meters. |
| 613 | 5,088,830 square meters. |
| 614 | 7,996,731 square meters. |
| 615 | 16,647,741 square meters. |
| 617 | 11,631,609 square meters. |
| 631 | 845,508 dozen pairs. |
| 633 | 38,564 dozen. |
| 634 | 419,550 dozen. |
| 635 | 438,256 dozen. |
| 636 | 386,545 dozen. |
| 638/639 | 1,738,928 dozen. |
| 640 | 1,067,699 dozen. |
| 641 | 960,852 dozen. |
| 642 | 220,625 dozen. |
| 645/646 | 530,970 dozen. |
| 647 | 1,109,833 dozen. |
| 648 | 792,968 dozen. |
| 649 | 619,581 dozen. |
| 650 | 77,894 dozen. |
| 651 | 530,873 dozen of which not more than 93,464 dozen shall be in Category 651–B[14]. |
| 652 | 1,776,617 dozen. |
| 659–C[15] | 281,050 kilograms. |
| 659–H[16] | 1,924,991 kilograms. |
| 659–S[17] | 414,247 kilograms. |
| 669–P[18] | 1,352,112 kilograms. |
| 670–L[19] | 10,761,357 kilograms. |
| 831 | 348,384 dozen pairs. |
| 833 | 18,439 dozen. |
| 835 | 87,104 dozen. |
| 840 | 338,840 dozen. |
| 842 | 184,388 dozen. |
| 845 | 1,567,105 dozen |
| 846 | 121,724 dozen. |
| 847 | 898,893 dozen. |
| 863–S[20] | 6,336,219 numbers. |
| 870 | 21,638,621 kilograms. |
| Group II | |
| 330, 332, 349, 353, 354, 359–O[21], 431, 432, 439, 459, 630,632, 643, 653, 654 and 659–O[22], as a group. | 93,858,209 square meters equivalent. |
| Sublevel in Group II | |
| 643 | 353,211 numbers. |
| Group III | |
| 201, 220, 222–225, 227, 229, 362, 369–O[23], 400, 414,464, 465, 469, 600, 603, 604–O[24], 606, 618–622, 624–629, 665, 666, 669–O[25] and 670–O[26], as a group. | 253,179,660 square meters equivalent. |
| Group IV | |
| 832, 834, 836, 838, 839, 843, 644/844, 850–852, 858 and 859, as agroup. | 20,140,687 square meters equivalent. |
| Sublevel in Group IV | |
| 644/844 | 2,554,380 numbers. |
| 836 | 188,478 dozen. |

[1] Categories 338–S/339–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[6] Category 360–P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[7] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[8] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[9] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[10] Category 369–S: only HTS number 6307.10.2005.

[11] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[12] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[13] Category 440–M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0030.

[14] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[15] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[16] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[17] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[18] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[19] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[20] Category 863–S: only HTS number 6307.10.2015.

[21] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[22] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[23] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[24] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[25] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[26] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 94–571 Filed 1–6–94; 11:21 am]

BILLING CODE 3510–DR–F

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

January 5, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** January 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The 1994 limits for Categories 340/640 and 351/651 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

January 5, 1994.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on January 12, 1994, you are directed to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Guatemala:

| Category | Adjusted twelve-month limit |
|---|---|
| 340/640 | 943,400 dozen. |
| 351/651 | 200,000 dozen. |

The guaranteed access level for Categories 340/640 and 351/651 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 94–514 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DR–F

## New Visa Stamp for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

January 5, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

**EFFECTIVE DATE:** February 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of Romania has notified the United States Government that instead of the former "Ministry of Commerce and Tourism—Department of Foreign Trade," officials of the newly established "Ministry of Commerce—Department of Foreign Trade" will issue and sign visas for textile products exported from Romania. Effective on February 1, 1994, textile products produced or manufactured in Romania and exported from Romania on and after February 1, 1994 shall be accompanied by a visa issued by the "Ministry of Commerce—Department of Foreign Trade." From February 1, 1994 through March 2, 1994, visas from either will be accepted. After March 2, 1994, only visas issued by the "Ministry of Commerce—Department of Foreign Trade" will be accepted.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW, room 3106, Washington, DC.

See 49 FR 493, published on January 4, 1984.

**Rita D. Hayes,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

January 5, 1994.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania for which the Government of Romania has not issued an appropriate visa.

The Government of Romania has notified the United States Government that instead of the "Ministry of Commerce and Tourism—Department of Foreign Trade," officials of the "Ministry of Commerce—Department of Foreign Trade" will sign and issue visas for textile products exported from Romania. Effective on February 1, 1994, you are directed to amend further the directive dated December 29, 1983 to provide for the use of the new visa stamp to accompany shipments of textile products, produced or manufactured in Romania and exported from Romania on and after February 1, 1994. From February 1, 1994 through March 2, 1994, visas from either will be accepted. After March 2, 1994, only visas issued by the "Ministry of Commerce—Department of Foreign Trade" will be accepted. A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 94–515 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary of the Army

### Notice of Availability, Environmental Assessment and Finding of No Significant Impact for the Disposal and Reuse of Cameron Station, VA

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of availability.

**SUMMARY:** This notice of availability is for the Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) prepared for the disposal and reuse of Cameron Station, Virginia. The EA has assessed the potential environmental impacts for two proposed reuse alternatives: to develop Cameron Station for mixed use; or to place Cameron Station into caretaker status. The first alternative involves the development of Cameron Station as follows: mixed residential on 70 acres, commercial/retail on 16 acres, open space/recreation on 50.5 acres, and 16 acres for infrastructure use. The second alternative would place all buildings and grounds in caretaker status.

**FOR FURTHER INFORMATION CONTACT:** Ms. Maria De La Torre, U.S. Army Corps of Engineers, (CENAB–PL–E), P.O. Box 1715, Baltimore, Maryland 21203–1715, (410) 962–2996.

**SUPPLEMENTARY INFORMATION:** Copies of the EA and FNSI will be available to the public for review for 30 days following publication of this notice.

Dated: December 29, 1993.

**Lewis D. Walker,**

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (L, L&E).*

[FR Doc. 94–446 Filed 1–7–94; 8:45 am]

BILLING CODE 3710–08–M

### Department of the Army

### Advisory Committee Meeting Notice

**AGENCY:** Headquarters, I Corps and Fort Lewis, Fort Lewis, WA, DOD.

**ACTION:** Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

*Name of the Committee:* Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

*Date of the Meeting:* January 20, 1994.

*Place:* Yakima Training Center, Building 266, Yakima, Washington.

*Time:* 1 p.m.

*Proposed Agenda:* Cultural and Natural Resources Management Plan Development and Review.

All proceedings are open. For further information contact Stephen Hart, (206) 967–4540.

**Kenneth L. Denton,**

*Army Federal Register Liaison Officer.*

[FR Doc. 94–490 Filed 1–7–94; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF ENERGY

### Draft Feasibility Study/Proposed Plan-Environmental Impact Statement for Remedial Action at the Tonawanda Site, Tonawanda, NY

**AGENCY:** Department of Energy (DOE).

**ACTION:** Extension of public comment period.

**SUMMARY:** DOE, in response to public comments received to date, has decided to extend to February 10, 1994, the public comment period on the draft feasibility study/proposed plan-environmental impact statement (FS/PP-EIS) for remedial action at the Tonawanda Site, Tonawanda, New York (DOE/EIS–0191D, EPA EIS No. 930393).

**DATES:** Comments on the draft FS/PP-EIS should be postmarked by February 10, 1994, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

**ADDRESSES:** Comments or requests for copies of the draft FS/PP-EIS should be addressed to: Ron Kirk, New York Site Manager, Former Sites Restoration Division, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee 37831. Telephone: (615) 576–7477. Fax number (615) 576–0956.

**FOR FURTHER INFORMATION CONTACT:** For further information on the Tonawanda

Site, contact Ron Kirk at the above address. For further information on DOE's National Environmental Policy Act (NEPA) procedures, contact: Carol Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4600 or leave a message at (800) 472–2756. For further information on DOE's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) procedures, contact: Randall Kaltreider, Acting Director, Office of Environmental Compliance (EH–22), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4440.

**SUPPLEMENTARY INFORMATION:** On November 12, 1993, the Environmental Protection Agency published a notice in the **Federal Register** (58 FR 60022) announcing the availability of the draft FS/PP-EIS (DOE/EIS–0191D, EPA EIS No. 930393) and the close of the public comment period scheduled for January 11, 1994. DOE's draft FS/PP-EIS for the Tonawanda Site integrates NEPA values with the procedural and documentation requirements of CERCLA, whenever practicable pursuant to DOE Order 5400.4. In response to requests from several parties to extend the comment period, and to ensure that all interested parties have the opportunity to comment, DOE is extending the comment period to February 10, 1994. Comments should be postmarked by February 10, 1994, to ensure consideration; comments postmarked after that date will be considered to the extent practicable.

Issued in Washington, DC, January 4, 1994.

**Tara O'Toole,**

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 94–499 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–P

## Notice of Program Interest for Minority Technical Education Program

**AGENCY:** Department of Energy, San Francisco Operations Office.

**ACTION:** Notice of Program Interest.

**SUMMARY:** The Department of Energy (DOE), Office of Economic Impact and Diversity, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Technical Education Program. Such support is authorized by 42 U.S.C. 7141 (d) and 7256(a); Public Law 95–619, part 3, sec. 2.11(d), which states that the Director of the Office of Minority Economic Impact may provide appropriate assistance to minority educational institutions to enable these institutions to participate in the activities of the Department. It is intended in particular to obtain proposals from post secondary two-year educational institutions, or from teams of organizations including qualified post secondary two-year educational institutions. For purposes of this solicitation, a qualified "Minority Education Institution" is a post secondary two-year educational institution of higher learning (such as a community college or vocational college) that is a non-profit entity with a minimum of 25 percent total minority enrollment. Pursuant to Public Law 95–619, "Minority" means any individual who is a citizen of the United States and who is a Negro, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

**DATES AND ADDRESSES:** Proposals (3 copies) should be submitted to Estela Romo, HRMD, U.S. Department of Energy, 1301 Clay St., Oakland, CA 94612. Applications received after March 15, 1994, will be held for one year and may be eligible for awards in FY 95. Proposers receiving awards in FY 1994 will be notified not later than June 15, 1994. Each proposal must contain a cover sheet (Standard Form 424), a technical proposal and budget justification.

**FOR FURTHER INFORMATION CONTACT:** All questions concerning this program notice should be directed to Arlene Coleman at (510) 637–1870.

**SUPPLEMENTARY INFORMATION:** With this notice, it is DOE's intent to encourage the submission of proposals for minority two year post secondary training that would address the following program objectives:

1. Increase the number of minority students that select a course of study leading to energy-related careers to enable and encourage them to bridge from high school to community college to four year educational institutions; and/or, increase the career opportunities through retention programs, retraining, and bridge programs in energy related careers.

2. Strengthen the quantity and quality of energy-related technical and academic curricula with emphasis on applied training provided for minority students at two-year post secondary schools.

3. Establish partnerships with industry and other community entities that promote economic growth opportunities of the community serviced by enriching energy-related technology transfer activities.

The purpose of this notice is to encourage the submission of proposals that address one or more of the following:

1. Provide financial assistance to financially needy honor students participating in the program.

2. Establish linkages with DOE contractors and private and/or public energy-related institutions to support student and faculty internships.

3. Institute energy related training in computer science, the physical sciences, the life sciences, environmental sciences, engineering, software engineering, engineering technologies.

4. Enhance the development of tech-prep education program curricula and bridge programs related to dropout prevention, re-entry, limited English proficiency, technical skills, and career opportunities to prepare high school students.

5. Enhance the articulation agreements from vocational schools and community colleges to four-year colleges and universities.

6. Identify and establish technology transfer activities between the population serviced by the two-year post secondary institution and private/or public institutions as it relates to economic growth and development of the community.

7. Establish linkages with DOE contractors, and private or public energy related institutions to support student and faculty internships and apprenticeships.

8. Provide support for travel expenses associated with participants' attendance at technology transfer meetings, workshops, and visits to national laboratories.

9. Establish linkages to overcome isolation of the institution through cooperative agreements, specialized curricula or other outreach activities.

10. Enhance the academic core and/or the basic principles of applied technology and science of the energy related curricula.

11. Identify and establish technology transfer activities between the population serviced by the two-year post secondary institution and private/or public institutions as it relates to economic growth and development of the community.

**Authority:** 10 CFR part 600, subparts A and B.

**Eligibility**

To be eligible to participate in this program, an institution must be a nonprofit institution of higher education which offers a two year associate degree program, a two year certificate program, and which is qualified as an institution of higher education. The education institution must have 25 percent or more minority enrollment. It should have a history of graduating minority students in some energy-related or technical field such as applied mathematics, engineering technologies, environmental science, computer sciences, software engineering, engineering, life sciences, or physical sciences. This program is open to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a community, vocational, or other institutions are separately eligible.

**Indirect Costs**

Indirect costs will be limited to eight percent.

**Project Director**

The Project Director is the representative and spokesperson for the institution in matters concerning the award. The Project Director should be available for consultation with the DOE Program Manager and assist in resolving issues or problems encountered by the DOE Program Manager during the tenure of the project.

**Project Funding**

FY 1994 funding up to $537,110 is available for awards under this program. It is estimated that these funds will support awards from seven to eight schools with funding levels of approximately $67,000 for this first fiscal year. Funding for the second year through the fifth year is estimated at $50,000 per year subject to the availability of funds. These estimates of funding and number of awards do not bind the U.S. Department of Energy to a specific number of awards unless otherwise specified by statute or regulation.

**Evaluation Process and Selection Criteria**

Applications may be subjected to external review following preliminary screening.

Projects will be selected for funding based on their quality as determined by DOE staff evaluation of the merit of the application using the following general criteria. The general criteria will be either Acceptable or Unacceptable based on the following:

1. The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.

2. Evidence of overall merit.

3. Use of unique, innovative, or meritorious methods, approaches, or ideas, including formal agreements between institutions.

4. Qualifications, capabilities, and experience of the application's Project Director and key personnel who are considered to be critical in achieving applicant objectives.

5. Demonstrate cost-sharing from non-Department of Energy sources.

6. The number of minority categories, number of participants that are expected to be impacted.

7. The degree to which the past efforts have impacted the local community in relationship to education in general.

The following specific criteria will be applied to projects. These criteria, along with the general criteria described previously, will be used for the technical evaluation of each project. Final selection of projects will be made by DOE based on the technical evaluations and other factors such as duplication of activities, total program balance, geographic distribution, balance of minority category and sub-category, demonstration of cost-sharing, and other factors.

1. Identification of needs of the project.

a. Institutional assessment and profile in meeting proposed requirement.

b. Identification of specific basic applied technologies and training objectives.

c. Involvement of community entities serviced by the two-year educational institution and other appropriate entities in establishment of project needs. Specifically, the project must address energy related technology transfer activities as it relates to economic growth of the community serviced by the education institution.

2. Plan of operation.

a. Definition of project activities needed with appropriate time and resource projections.

b. Management Plan.

c. Relationship of this project to the overall institutional plan.

3. Pool of potential student trainee participants.

4. Overall benefits to the institution(s) and the community served by the institution.

**Proposal Preparation Guidelines**

Proposals submitted in response to this solicitation shall contain the information required in this announcement and should reference Program Notice DE–FG03–94SF20212 Proposals will be evaluated, independently, as received and selected for awards up to the limit of available funding. DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Issued in Oakland, CA, on December 21, 1993.

Department of Energy

**Martin J. Domagala,**

*Acting Manager.*

[FR Doc. 94–380 Filed 1–7–94; 8:45 am]

BILLING CODE 6450-01-P

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## Office of Arms Control and Nonproliferation

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangement", under the Additional Agreement for Corporation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involve approval for the following retransfer: RTD/NO(EU)–60 for the transfer from the Federal Republic of Germany to Norway of 17.63 kilograms of uranium containing 3.517 kilograms of the isotope uranium-235 (19.95 percent enrichment) for test fuel fabrication for the Halden reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on January 5, 1994.

**Salvador N. Ceja,**

*Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.*

[FR Doc. 94–498 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–M

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## Office of Fossil Energy

**[Docket No. ERA–FE–81–012]**

## Tucson Electric Power Co.; Application for Rescission of a Prohibition Order Issued Pursuant to the Powerplant and Industrial Fuel Use Act of 1978

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of application to rescind Prohibition Order.

**SUMMARY:** Tucson Electric Power Company has requested that DOE rescind a Fuel Use Act Prohibition Order issued to electric generating units at its Irvington Generating Station located near Tucson, Arizona.

**DATES:** Comments must be submitted on or before February 24, 1994.

**ADDRESSES:** Comments should be submitted to the Department of Energy, Office of Fossil Energy, Office of Fuels Programs, Docket room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–FC–81–012 should be printed on the outside of the envelope and on the documents contained therein.

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202–586–4708 or Michael T. Skinker, Esq. (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received an application by Tucson Electric Power Company (TEP) to rescind the Prohibition Order issued on July 15, 1981 (46 FR 37960, July 23, 1981), pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) 42 U.S.C. 8301 *et seq.* The order prohibited the burning of oil or natural gas in TEP's Irvington Generating Station Units 1, 2 and 3, located near Tucson, Arizona.

Pursuant to 10 CFR 501.102(b), TEP filed its application based on a substantial change in the circumstances upon which the Prohibition Order was originally issued. TEP claims this change in circumstances to be beyond its control. TEP cites the sharp reduction in economic benefits to be realized from the conversion to coal and the potentially costly environmental disincentives to using coal, combined with TEP's financial situation, as the impetus for the requested relief. TEP requests rescission to permit the company to continue to use oil or natural gas above the percentage limits specified in the prohibition order.

### Procedural Matters

Any party or person desiring to be heard or to protect this application for rescission should file five copies of any comments, petitions to intervene, or protests at the address provided above. Any request for a public hearing must be made within the public comment period. In making its decision regarding the requested rescission action, DOE will consider all relevant information submitted or otherwise available to it.

The public file containing a copy of the application and other documents and supporting materials on this proceeding is available, upon request, at the address above.

Issued in Washington, DC, on January 5, 1994.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*

[FR Doc. 94–500 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–M

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## Federal Energy Regulatory Commission

## Duke Power Co.; Notice of Intent To Prepare an Environmental Assessment

**[Project No. 2607–001]**

January 4, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for relicensing of the existing Spencer Mountain Hydroelectric Project, Project No. 2607–001. The project is located on the South Fork Catawba River in Gaston County, North Carolina.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

The purpose of this notice and the attached scoping document is to solicit comments from interested individuals, organizations, and agencies with environmental expertise and concerns that will assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

The scoping document will: (1) Identify preliminary environmental issues related to the proposed projects, (2) identify preliminary resource issues that are not important and do not require detailed analysis, (3) identify reasonable alternatives to be addressed in the EA, and (4) solicit all available information, especially quantified data, on the resource issues, including points of view in opposition to, or in support of, the staff's preliminary views.

Written comments must be filed no later than March 1, 1994 with: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 3100, Washington, DC 20426.

All written correspondence should clearly show the following caption on the first page: **Spencer Mountain Hydroelectric Project, (FERC No. 2607–001).**

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–455 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Docket No. CP94–162–000, et al.]**

## NGC Energy Resources Limited Partnership, et al.; Natural Gas Certificate Filings

January 3, 1994.

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

### 1. NGC Energy Resources Limited Partnership.

[Docket No. CP94–162–000]

Take notice that on December 22, 1993, NGC Energy Resources, Limited Partnership (NER), located at 13430

Northwest Freeway, suite 1200, Houston, TX 77040, filed in the above-referenced docket, pursuant to section 1(b) of the Natural Gas Act (NGA), 15 U.S.C. 717(b) and Rule 207(a)(2) of the Commission's rules of Practice and Procedure, 18 CFR 385.207, a Petition for Declaratory Order Disclaiming Jurisdiction over certain facilities acquired from Northern Natural Gas Company (Northern), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that NER entered into an agreement with Northern under which Northern will sell NER the "Bear Paw" facilities located in Blaine, Chouteau and Hill Counties, Montana, and interconnecting with the pipeline owned by Many Islands Pipe Lines (Canada) Limited at the Montana/Saskatchewan border. NER will acquire approximately 500 miles of various diameter gathering lines along with three compressors totaling 13,600 horsepower.

It is further stated that NER requests that the Commission declare the entire Bear Paw system to be gathering facilities under section 1(b) of the NGA. NER also states that Northern has filed an application in Docket No. CP94–130–000 to authorize the abandonment and sale of these facilities to NER.

*Comment date:* January 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

**2. Questar Pipeline Company**

[Docket No. CP94–159–000]

Take notice that on December 23, 1993, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP94–159–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon minor pressure regulating facilities under the blanket authorization issued by the Commission in Docket No. CP82–491–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to abandon its Huntington District Regulator Station (HU0005 DRS) located adjacent to its six-inch Jurisdictional Lateral (J.L.) No. 44 located in Emery County, Utah, used in conjunction with providing gas service to Mountain Fuel Supply Company (Mountain Fuel), Questar's local distribution company affiliate. Questar states that the facilities to be abandoned at the HU0005 DRS comprise approximately 100 feet of three, four and six-inch piping and one pressure regulating valve assembly. Questar states that the investment associated with the facilities to be abandoned is $15,129. Questar states that because these facilities function solely to reduce delivery pressures for individual downstream sales and transportation delivery meter stations, no actual deliveries were made directly through these facilities. Questar states that following abandonment, the 3-inch Huntington Tap will remain in service. Questar states that because Mountain Fuel will continue to deliver to its customers via individual meter and regulating stations along the length of J.L. No. 44, there will be no abandonment of gas service to Mountain Fuel or its customers as a result of granting it permission to abandon the HU0005 DRS.

*Comment date:* February 17, 1994, in accordance with Standard Paragraph G at the end of this notice.

**3. Great Lakes Gas Transmission Limited Partnership**

[Docket No. CP94–143–000]

Take notice that on December 20, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP94–87–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations and Great Lakes' blanket certificate issued in Docket No. CP90–2053–000 pursuant to section 7 of the Natural Gas Act for authorization to construct and operate a new delivery point near Chippewa Township, Isabella County, Michigan, to provide Midland Cogeneration Venture Limited (MCV) the flexibility and the security of a second delivery point to receive natural gas transported by Great Lakes, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that MCV is an existing shipper to whom it provides firm transportation service of up to 80,000 Mcf of gas per day under Part 284 of the Commission's regulations. Great Lakes states that it currently receives the gas at its Emerson Receipt Point, located in Great Lakes' Western Zone, and delivers gas to MCV through the Chippewa Meter Station on Great Lakes' mainline. Great Lakes states that the design capability of the Chippewa Meter Station has now been exceeded and that MCV has requested it to construct and operate a new delivery point (Midland Meter Station) to provide flexibility and the security of a second delivery point. Great Lakes states that the Midland Meter Station will consist of taps, two turbine meters, a gas separator, and an electronic measurement system. Great Lakes estimates that the cost to construct the facilities will be about $1.4 million. Great Lakes states that the Midland Meter Station and existing transportation service will not impact its existing peak day and annual deliveries, and the transportation service will continue to be provided, under Part 284 of the Commission's regulation, without detriment to service to any other shipper on its system.

*Comment date:* February 17, 1994, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–457 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94-163-000, et al.]

## Kansas Gas Supply Corp., et al.; Natural Gas Certificate Filings

December 30, 1993.

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

### 1. Kansas Gas Supply Corporation

[Docket No. CP94-163-000]

Take notice that on December 21, 1993, Kansas Gas Supply Corporation (KGS), 10200 Grogans Mill Road, The Woodlands, Texas 77380, filed in Docket No. CP94-163-000 a petition for an order declaring that the gathering system, which KGS proposes to acquire from Williams Natural Gas Company (WNG), is a gathering facility pursuant to Section 1(b) of the Natural Gas Act and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

KGS states in its petition that it seeks a declaration from the Commission that the Barber County Gathering System located in Barber County, Kansas and Woods County, Oklahoma, which KGS proposes to acquire from WNG, is a gathering facility. Further, KGS states that it seeks a declaration that the acquisition, ownership and operation of the Barber County Gathering System will not subject KGS, or any of the facilities of KGS (including the Barber County Gathering System), or any of the services performed or to be performed by KGS, to the jurisdiction of the Commission under the Natural Gas Act or the Commission's regulations thereunder.

*Comment date:* January 20, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

### 2. Williams Natural Gas Company

[Docket No. CP94-147-000]

Take notice that on December 20, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94-147-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale, WNG's Barber County gathering system and the assignment and abandonment of gas purchase contracts and direct sales contracts to Kansas Gas Supply Corporation (KGS), all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG proposes to abandon, by sale to KGS, the Barber County gathering system located in Barber County, Kansas and Woods County, Oklahoma; to assign and abandon the sales obligation of producers of Natural Gas Act gas presently or previously under contract to WNG to KGS; and to assign and abandon all of WNG's pipeline rights in the sale facilities to KGS.

*Comment date:* January 20, 1994, in accordance with Standard Paragraph F at the end of this notice.

### 3. Florida Gas Transmission Company.

[Docket No. CP94-141-000]

Take notice that on December 20, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP94-141-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate new delivery point facilities for City Gas Company of Florida (CGF) in Brevard County, Florida, under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to install a meter station, to be known as the Indian River Meter Station, to serve as a delivery point for CGF. It is stated that the delivery point will permit deliveries of up to 480 MMBtu equivalent of natural gas per hour. It is asserted that the deliveries will be made under the terms of the existing FTS-1 service agreement between FGT and CGF. It is further asserted that the deliveries are within CGF's existing entitlement from FGT and that the deliveries would not disadvantage FGT's other customers. It is estimated that construction of the facilities would cost $81,000, to be reimbursed by CGF.

*Comment date:* February 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

### 4. High Island Offshore System

[Docket No. CP94-127-000]

Take notice that on December 13, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94-127-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Fina Natural Gas Company (Fina), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS proposes to terminate 12,000 Mcf per day in firm transportation service which it renders for Fina according to HIOS' Rate Schedule T-19. HIOS also proposes to terminate 20,000 Mcf per day in associated Interruptible Overrun Transportation Service volumes it renders according to its Rate Schedule I. HIOS notes that service for Fina was certificated in Docket No. CP75-104 by order issued March 29, 1982, 18 FERC ¶ 61,274 (1982). HIOS states that according to timely notice given to it by Fina's letter dated July 26, 1993, it proposes to terminate these services effective August 22, 1994—the end of the primary term of an agreement between HIOS and Fina dated September 25, 1987, and designated as HIOS' Rate Schedule T-19.

*Comment date:* Janaury 20, 1994, in accordance with Standard Paragraph F at the end of this notice.

### Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes

that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–456 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–P

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**[Project No. 11311–001 Nevada]**

## TS Hydro; Notice of Surrender of Preliminary Permit

January 4, 1994.

Take notice that TS Hydro, Permittee for the TS Ranch Project No. 11311, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11311 was issued November 13, 1992, and would have expired October 31, 1995. The project would have been located partially on lands administered by the Bureau of Land Management on TS Ranch in Lander and Eureka Counties, Nevada.

The Permittee filed the request on December 8, 1993, and the preliminary permit for Project No. 11311 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–458 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. EG94–13–000]**

## Brooklyn Energy Limited Partnership; Application for Determination of Exempt Wholesale Generator Status

January 4, 1994.

On January 3, 1994 Brooklyn Energy Limited Partnership ("BELP") (c/o Mary Ann Ralls, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations. BELP is a Nova Scotia limited partnership formed to own an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 14, 1994 and must be served on Applicant. 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. 94–431 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94-101–000]**

## Carnegie Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 8A, to become effective January 31, 1994.

Carnegie states that it is filing the above tariff sheet as a limited application under Section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to New Jersey Natural Gas Company, Carnegie's former Rate Schedule LVWS customer Account No. 191 costs billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's filing in Docket No. RP94–47-000.

Carnegie states that copies of its filing were served on all jurisdictional 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. 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. 94–459 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket No. RP94–102–000]**

## Carnegie Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 7A, to become effective January 31, 1994.

Carnegie states that it is filing the above tariff sheet as a limited application under section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to Carnegie's former bundled firm sales customer the pre-restructuring balance of Account No. 858 costs included in Carnegie's Account No. 186.7, as adjusted for carrying charges and interest, together with amounts direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Texas Eastern's filing in Docket No. RP93–204–000.

Carnegie states that copies of its filing were served on all jurisdictional 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. 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. 94–460 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–96–000]

## CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on February 1, 1994.

CNG states the proposed rate changes would increase CNG's revenues by $106.6 million based on a test period cost of service for the twelve months ended September 30, 1993, as adjusted for known and measurable changes through June 30, 1994. CNG states that increased rates are necessary primarily to recover increased operation and maintenance expenses, increased costs of material and supplies, increased costs of transportation by others, increased depreciation expense, increased taxes, stranded costs, and increased plant investment. The filed rate of return is based on a capitalization of 65.73 percent common equity and 34.27 percent debt with an equity return of 14 percent.

CNG's filing includes primary and alternate tariff sheets. CNG states that the primary tariff sheets reflect the end of CNG's gathering rate moratorium and the establishment of a two-part gathering rate. The alternate tariff sheets reflect continuation of the gathering rate moratorium that was approved for CNG in Docket No. RP88–211.

CNG states that it has posted and served its filing in accordance with § 154.16 of the regulations.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 11, 1994. 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. 94–436 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–98–000]

## Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 31 changes in rates for effectiveness on January 1, 1994.

Granite State further states that its filing includes Second Revised Sheet No. 20 containing a revised Index in its tariff.

According to Granite State the charges on Original Sheet No. 31 allocate the accumulated balance in its A/C 191 as of October 31, 1993 to its customers, Bay State Gas Company and Northern Utilities, Inc. Granite State further states that it proposes to directly bill the balance in A/C 191 as transitional costs pursuant to Order Nos. 636, et al. It is further stated that Granite State commenced restructured operations on November 1, 1993 under a compliance plan and tariff approved by the Commission in Docket No. RS93–1–000.

Granite State states that copies of its filing have been served on its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1994. 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. 94–461 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–93–000]

## K N Interstate Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, K N Interstate Gas Transmission Co. (KNI), tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume Nos. 1–A and 1–B. KNI states that the proposed changes would increase revenues from jurisdictional transportation, no-notice, and storage service by $12.0 million based on the twelve-month period ending September 30, 1993, as adjusted for known and measurable changes.

KNI states that the jurisdictional rates filed herewith are designed to enable KNI to recover increases in its jurisdictional cost of service resulting from: (1) Additional facilities, and (2) increased operating costs and higher costs of materials and supplies.

KNI requests that the tendered sheet(s) be accepted for filing and be permitted to become effective February 1, 1994.

KNI states that copies of the filing were served upon KNI's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. 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. 94–434 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TM94–4–16–000]

## National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective on February 1, 1994:

Second Revised Sheet No. 225

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission and to be recovered by National by operation of Section 20 of the General Terms and Conditions to National's FERC Gas Tariff, Third Revised Volume No. 1. National further states that the pipeline supplier that has received approval to bill revised take-or-pay charges, as reflected in National's filing herein is: Tennessee Gas Pipeline Corporation.

National states that copies of National's filing were served on National's jurisdictional customers and on the 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 Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before January 11, 1994. 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. 94–438 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–88–000]

## Pacific Gas Transmission Co.; Change in Rates

January 4, 1994.

Take notice that on December 23, 1993, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain tariff sheets to establish a mechanism to adjust the effective and fuel and line loss percentages to reflect more closely the current requirements for fuel and line loss on PGT's system.

PGT proposes to make the revised tariff sheets needed to implement this mechanism effective on January 22, 1994.

A copy of this filing has been served on the parties on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or 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 of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1994. 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. 94–432 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–94–000]

## Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on appendix A to the filing, to become effective March 1, 1994.

Southern states that the tariff sheets reflect an anticipated reduction in the level of firm service from its customer, Atlanta Gas Light Company, and a reduced level of jurisdictional revenues from the level established under the compliance filing in Docket No. RS92-10.

Southern states that it has continued to employ the Straight Fixed Variable method for cost classification, cost allocation and rate design and has utilized the mitigation methods required by the Commission in its Order of September 3, 1993. In order to prevent a significant increase to Southern's remaining firm customers as a result of the reduced firm service entitlements Southern proposes to (1) design IT rates based on a 75% load factor basis, (2) charge separately for injections and withdrawals into the Contract Storage Service (CSS) and the ANR Storage Service, and (3) revise the allocation methodology for the ANR Storage Service to reflect the use of contract demands for allocating costs to this incremental service.

Southern requests waiver of the five-month suspension period in order to allow the proposed tariff sheets to become effective March 1, 1994, the date the anticipated reduced service levels will become effective.

Southern states that copies of the filing were served upon all of Southern's jurisdictional purchasers, shippers 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. 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. 94–433 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–95–000]

## Southern Natural Gas Co.; GSR Cost Recovery Filing

January 4, 1994.

Take notice that on December 30, 1993, Southern Natural Gas Company (Southern) filed pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c)

(1988), to recover gas supply realignment ("GSR") costs incurred as a consequence of Southern's implementation of restructured pipeline services under Order No. 636, et seq. Southern states that the tariff sheets identified below were filed in compliance with the Commission's orders in Southern's restructuring proceeding in Docket No. RS92–10–000 and the procedures set forth in Section 31 of the General Terms and Conditions of Southern's FERC Gas Tariff, Seventh Revised Volume No. 1:

First Revised Second Revised Sheet No. 15
First Revised Second Revised Sheet No. 17
First Revised Second Revised Sheet No. 18
Second Revised Sheet No. 29
Second Revised Sheet No. 30
Second Revised Sheet No. 31

Southern states that the purpose of this filing is to set forth additional known and measurable GSR costs which have been paid or incurred by Southern since the filing on December 1, 1993 of its first GSR cost recovery filing in Docket No. RP94–67–000. Southern states that it sets forth in this filing the revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the reformation of additional gas supply contracts that have become unnecessary and/or unmarketable as a result of the receipt by Southern of revised service elections from its customers following the mandatory restructuring by Southern of its pipeline services under Order No. 636. Southern requests that the tariff sheets be made effective on February 1, 1994.

Southern states that it seeks to recover $53.8 million in GSR costs which has been paid or incurred in connection with the reformation of two gas supply contracts. Southern states that these GSR costs have arisen as a direct result of the need to realign gas supply contracts following customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern further states that none of the GSR costs sought to be recovered in the instant filing constitute take-or-pay settlement costs under gas supply contracts existing at March 31, 1989 which would be subject to the provisions of Southern's 1988 take-or-pay settlement in Docket No. RP86–63–000.

Southern states that copies of the filing were served upon Southern's jurisdictional 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1994. 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 Southern's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–435 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. TM94–4–17–000]

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective February 1, 1994.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1993.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected expenditures for electric power for the twelve month period beginning February 1, 1994 based upon actual expenditures for the twelve month period ending October 31, 1993.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current Rate Schedule FT–1 and IT–1 shippers 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 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 January 11, 1994. 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 a file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–439 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

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[Docket No. RP94–99–000]

## Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Commission promulgated thereunder to recover Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that it is filing to recover Stranded Costs pursuant to § 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume 1.

Original Sheet No. 175
Original Sheet No. 176
Original Sheet No. 177
Original Sheet No. 178
Sheet Nos. 179–199

The proposed effective date of these tariff sheets is February 1, 1994.

Texas Eastern states that by this filing it seeks to recover known and measurable Stranded Costs totalling $2,238,018.86 incurred from September 1, 1993 through November 30, 1993. Texas Eastern has paid $2,241,497.61 in demand charges during this period and received a rate refund of $23,879.88 in principal and interest from Columbia Gulf Docket Nos. RP91–160 and RP91–161 et al. on October 25, 1993, related to September, 1993 activity. Interest of $20,401.13 at the current FERC annual rate of 6.00%, net of deferred income tax impact, is added for the carrying

charges from the date of payment of the costs to the projected date of payment by the customers.

Texas Eastern states that Stranded Costs shall be allocated to Texas Eastern's customers under Rate Schedules CDS, FT-1, and SCT in accordance with the methodology specified in § 15.2(D) of the General Terms and Conditions. At each customer's individual option, payment of these Stranded Costs amounts may be amortized over as much as a twelve month period with carrying charges calculated on amounts uncollected, net of deferred taxes, pursuant to § 154.305 of the Commission's Regulations.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern 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 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 January 11, 1994. 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. 94-462 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP94-97-000]

## Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective February 1, 1994:

1st Revised Sheet No. 148

Transwestern states that the tariff sheet revises Transportation Service Agreement—Form N, Operator Balancing Agreement, Sheet No. 148 in order to revise the Index Price contained therein. The revised Index Price (i) will be based on three geographic locations, rather than one, and (ii) will reflect the average of the daily prices for such locations as quoted in Gas Daily for the applicable month, rather than a price based on a price quoted in the first publication of Gas Daily in a particular month.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

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. All such motions or protests should be filed on or before January 11, 1994. 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. 94-463 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. RP94-100-000]

## Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing, to be effective February 1, 1994.

Viking states that the purpose of this filing is to make several miscellaneous tariff modifications to reflect the acquisition of Viking's stock by Northern States Power Company and changes in personnel, addresses and telephone numbers occasioned by that acquisition. In addition, Viking proposes to: (1) Change the time for commencement of the gas day from 8 a.m. to 12:00 noon; (2) establish a minimum delivery threshold for the installation of electronic measurement equipment; (3) delete the PGA clause from its tariff, as no longer required; (4) eliminate references to Order No. 497 that are no longer appropriate in view of the Commission's recent finding that Viking is currently not subject to Order No. 497 (see East Tennessee Natural Gas Co., et al., Dockets Nos. MG91-4-001 et al., 65 FERC Paragraph 61,389 (December 23, 1993), mimeo at 39-40); (5) delete a reference to common operating personnel with Viking's former affiliate, Minnesota Intrastate Transmission System; (6) change the governing law in its pro-forma service agreements from Texas to Minnesota; and (7) revise the index of shippers to reflect contract modifications occasioned by implementation of Order No. 636. Finally, Viking has modified its tariff to correct several miscellaneous typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. 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. 94-464 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

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[Docket No. TM94-3-49-000]

## Williston Basin Interstate Pipeline Co.; Fuel Reimbursement Charge Filing

January 4, 1994.

Take notice that on December 30, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

Second Revised Volume No. 1

Third Revised Sheet No. 15
Second Revised Sheet No. 15A
Third Revised Sheet No. 16
Second Revised Sheet No. 16A
Third Revised Sheet No. 18
Second Revised Sheet No. 18A
Second Revised Sheet No. 19
Second Revised Sheet No. 20
Third Revised Sheet No. 21

Original Volume No. 2

Fifty-second Revised Sheet No. 10
Fiftieth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is February 1, 1994.

Williston Basin states that the revised tariff sheets reflect revisions to the fuel

reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms, and Conditions of Second Revised Volume No. 1 of Williston Basin's FERC Gas Tariff.

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 January 11, 1994. 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 to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–437 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–4823–3]

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

**DATES:** Comments must be submitted on or before February 9, 1994.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Research and Development**

*Title:* Request for Information for the bioremediation Field Initiative Database Systems (EPA ICR No. 1672.01).

*Abstract:* This is a new ICR for gathering information on the design, operation, and performance of biological treatment technologies from remediation experts and managers working at sites where biological treatment technologies are being tested or implemented. The authority for collecting information on innovative treatment technologies is described at Section 311 of the Superfund Amendments and Reauthorization Act, Section 8003 of the Resource Conservation and Recovery Act, Section 7001 of the Oil Pollution Act, and Section 10 of the Toxic Substance Control Act. The information will help the EPA to deploy innovative technologies more quickly at Superfund and other sites.

Selected respondents will be asked to complete and return, via mail, a two-part questionnaire. The first part requests general site information, such as location, contacts, contaminants, and legislative authority under which the site is being remediated. The second part requests site-specific biotechnology information, such as the stage of the operation, wastes and media being treated, clean-up level goals, and the performance and cost of the treatment. All responses will be strictly voluntary. Following the initial questionnaire, respondents will receive follow-up questionnaires on a semi-annual basis to update the information already provided.

The EPA will enter the information from completed questionnaires into computer databases that will be publicly accessible through computerized bulletin boards.

*Burden Statement:* Public reporting burden for respondents is estimated to average 1.6 hours per response with 5 hours per response for the first-time respondents and 0.5 hours for respondents updating previous responses, including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the questionnaire.

*Respondents:* Respondents may be State and local governments, businesses, non-profit institutions, and small businesses and organizations involved in the use of innovative technologies at Superfund or other remediation sites.

*Estimated No. of Respondents:* 767.

*Estimated Responses Per Respondent:* 2.

*Frequency of Collection:* Semiannual.

*Estimated Total Annual Burden on Respondents:* An estimated annual average of 2,401 hours over three years.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St. SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: January 4, 1994.

**David Schwarz,**

*Acting Director, Regulatory Management Division.*

[FR Doc. 94–495 Filed 1–7–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4823–4]

### Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

**AGENCY:** Environmental Protection Agency.

**ACTION:** FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

**SUMMARY:** As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the federal facilities environmental restoration process.

**DATES:** The meeting will be held on January 19, 1994 from 9 a.m. until 6:15 p.m. and on January 20, 1994 from 9 a.m. until 4 p.m.

**ADDRESSES:** The meeting will be held at the Hyatt Regency Crystal City, 2799 Jefferson-Davis Highway, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Anyone needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Marilyn Null, Office of Federal Facilities Enforcement, U.S. EPA (Mail Code 2262), 401 M Street, SW., Washington, DC 20460, (202) 260–5686.

Dated: December 16, 1993.

**Marilyn Null,**

*Designated Federal Official.*

[FR Doc. 94–496 Filed 1–7–94; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

**Please note:** The Commission has requested expedited OMB review of this item by January 7, 1994, under the provisions of 5 CFR 1320.18.

*OMB Number:* None.

*Title:* Implementation of sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, First Report and Order.

*Action:* New collection.

*Respondents:* Individuals or households, state or local governments, federal agencies or employees, non-profit institutions and businesses or other for-profit (including small businesses).

*Frequency of Response:* One time filing requirement due by February 10, 1994.

*Estimated Annual Burden:* 50 responses; 2 hours average burden per response; 100 hours total annual burden.

*Needs and Uses:* The Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, title VI, section 6002(b), 107 Stat. 312, 395 (1993), amended sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n) and 332, to create a comprehensive regulatory framework for all mobile radio services. Under the amended statute, certain private land mobile radio licensees will be reclassified as "commercial mobile radio service" licensees and will be treated as common carriers subject to the foreign ownership and control restrictions of section 310(b) of the Communications Act. A "grandfathering" provision, however, in new section 332(c)(6) permits the Commission to grant waivers of section 310(b) to private land mobile licensees that petition the Commission by February 10, 1994. This present action clarifies the filing procedures for such petitions and reminds all potentially affected private radio licensees of the February 10, 1994 filing deadline. The Commission will use the waiver petitions to determine whether each given petitioner should be permitted to retain foreign ownership or control, pursuant to statute.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–518 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

### Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

*OMB Number:* 3060–0048.

*Title:* Application for Consent to Transfer of Control.

*Form Number:* FCC Form 704.

*Action:* Revision of a currently approved collection.

*Respondents:* Businesses or other for-profit (including small businesses).

*Frequency of Response:* On occasion reporting requirement.

*Estimated Annual Burden:* 800 responses; 8 hours average burden per response; 6,400 hours total annual burden.

*Needs and Uses:* Section 310(d) of the Communications Act of 1934, as amended, requires that common carriers and noncommon carrier permittees or licensees contemplating a transfer of control apply for authority to make such transfer. In addition to information specified on FCC Form 704, applicants may be required to file other information. Information is used by FCC staff to determine whether an entity seeking control of an existing permittee or licensee is legally and financially qualified to become a common carrier or noncommon carrier telecommunications licensee. If the information is not submitted the above determination required by the Communications Act could not be made. The FCC Form 704 has been revised to incorporate a certification pursuant to rules implementing the provisions of section 5301 of the Anti-Drug Abuse Act of 1988.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94–519 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL RESERVE SYSTEM

### Grupo Financiero Banamex Accival, S.A., de C.V.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 1994.

**A. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Grupo Financiero Banamex Accival, S.A. de C.V.*, Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico, D.F., Mexico, and thereby indirectly acquire Banamex USA Bancorp, Los Angeles, California, and California Commerce Bank, Los Angeles, California.

In connection with this application, Applicant also proposes to acquire ACCI Securities, Inc., New York, New York, and thereby engage in full service brokerage pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y; and private placement services (soliciting purchasers in the private placement of all types of securities) pursuant to the criteria set forth in *NCNB Corporation*, 76 Federal Reserve Bulletin 864 (1990).

Board of Governors of the Federal Reserve System, January 3, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-467 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

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## Home Bancorp, et al.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1993.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Home Bancorp*, Fort Wayne, Indiana; to engage *de novo* in making and servicing a loan to the Employee Stock Ownership Plan of Home Loan Bank SB, Fort Wayne, Indiana, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 3, 1993.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-468 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

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## Triangle Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 31, 1994.

**A. Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Triangle Bancorp, Inc.*, Raleigh, North Carolina; to acquire 100 percent of the voting shares of Roanoke Valley Savings Bank, Inc., SSB, formerly known as Roanoke Valley Savings Bank, SSB, Roanoke Rapids, North Carolina.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Bank Corporation of Georgia*, Macon, Georgia; to acquire 49.7 percent of the voting shares of AmeriCorp, Inc., Savannah, Georgia, and thereby indirectly acquire Ameribank, N.A., Savannah, Georgia.

2. *1st United Bancorp*, Boca Raton, Florida; to acquire 99.72 percent of the voting shares of Suburban Bank, Lake Worth, Florida.

**C. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Grain Company*, Coon Rapids, Iowa; to acquire 100 percent of the voting shares of Farmers National Bank, Bayard, Iowa.

**D. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire 100 percent of the voting shares of Heritage National Bank, St. Louis, Missouri.

2. *Independent Southern Bancshares, Inc. Employee Stock Ownership Plan and Trust*, Brownsville, Tennessee; to become a bank holding company by acquiring at least 25 percent of the

voting shares of Independent Southern Bancshares, Inc., Brownsville, Tennessee, and thereby indirectly acquire Brownsville Bank, Brownsville, Tennessee; Union Savings Bank, Covington, Tennessee; and Tennessee Bank and Trust, Millington, Tennessee.

**E. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Avon State Bank Employee Stock Ownership Plan and Trust*, Avon, Minnesota; to become a bank holding company by acquiring an additional 15.31 percent of the voting shares of Avon Bancshares, Inc., Avon, Minnesota, for a total of 30.58 percent, and thereby indirectly acquire Avon State Bank, Avon, Minnesota.

**F. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Bancrecer, S.A.*, Mexico City, Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, N.A., Dallas, Texas.

*2. Extraco Bankshares, Inc.*, Waco, Texas; to acquire 94.97 percent of the voting shares of Guaranty Bank and Trust Company, Gatesville, Texas.

*3. Grupo Financiero Bancrecer, S.A., De C.V.*, Mexico City, Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, N.A., Dallas, Texas.

**G. Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Grupo Financiero Bancomer, S.A.*, Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bancomer, S.A., Mexico City, Mexico; Bancomer Holding Company (Antilles) N.V., Curacao, Netherlands Antilles; Bancomer Holding Company (Netherlands) B.V., Rotterdam, Netherlands; Bancomer Holding Company, Los Angeles, California; and Grossmont Bank, La Mesa, California.

Board of Governors of the Federal Reserve System, January 3, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-469 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

## Betty Ruth Whittington, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 1993.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Betty Ruth Whittington* and Jimmy Harold Whittington, St. Francisville, Louisiana; to each acquire 23.18 percent of the voting shares of Commerce Corporation, St. Francisville, Louisiana, and thereby indirectly acquire Bank of Commerce and Trust Company, St. Francisville, Louisiana.

Board of Governors of the Federal Reserve System, January 3, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-470 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88D-0087]**

### Manufacture of in Vitro Diagnostic Products; Current Good Manufacturing Practice Final Guideline; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline for the Manufacture of In Vitro Diagnostic Products" that contains production practices which are acceptable to FDA for assuring the safety and effectiveness of in vitro diagnostic products. Manufacturers of in vitro diagnostic products may find the information in the guideline useful in developing procedures that comply with the current good manufacturing practice (CGMP) regulations for these products. A draft document was previously made available for public comment.

**DATES:** Comments by March 11, 1994.

**ADDRESSES:** Submit written requests for single copies of the final guideline to the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597 (toll free outside MD 800-638-2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the final guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The final guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Z. Frank Twardochleb, Center for Devices and Radiological Health (HFZ-300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-1128.

**SUPPLEMENTARY INFORMATION:** FDA first announced the availability for public comment of the draft guideline in the **Federal Register** of April 7, 1988 (53 FR 11561). In that same issue of the **Federal Register** (53 FR 11561), FDA announced the forthcoming meeting of the agency's Device Good Manufacturing Practice Advisory Committee (the committee). As a result of the notice and the open public meeting, FDA received 17 letters providing comments—14 from manufacturers, 2 from trade associations, and 1 from an attorney representing a manufacturer. Presentations before the committee by industry and FDA resulted in committee recommendations that the agency: (1) Continue to handle the document as a guideline; (2) change the title and/or scope of the document to clarify which products are subject to the guideline; and (3) extend the comment period from June 6, 1988 to July 15, 1988.

FDA extended the comment period as recommended by the committee and revised the guideline based on the comments received. A notice of availability of the second draft was published in the **Federal Register** of April 19, 1990 (55 FR 14863).

Since release of the second draft, four letters of comment have been received from two trade associations, one manufacturer, and one user association. Meetings have also been held with the two trade associations—the Association of Microbiological Diagnostic Manufacturers and the Health Industry Manufacturers Association. A total of 21 letters of comment were received in response to all notices. These comments are on file with the Dockets Management Branch under Docket No. 88D–0087.

The notice of availability of the draft guideline stated that it would be issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to the agency. The agency is now in the process of considering whether to revise § 10.90(b). Although that decision has not been made, the agency has decided to publish this guideline. However, this notice and the final guideline are not being issued under the authority of § 10.90(b), and the final guideline, although called a guideline, does not operate to bind FDA or any other person in any way. The agency advises that this final guideline represents its current position on the requirements of the CGMP regulations for in vitro diagnostic products. The guideline may be useful to manufacturers of in vitro diagnostic products. A person may also choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to depart from the practices and procedures set forth in the final guideline, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

On November 23, 1993 (58 FR 61952), FDA issued a notice of proposed rulemaking to revise the medical device CGMP regulations. Any revisions to the CGMP regulations may result in the need for changes to this guideline. Therefore, on issuing a final rule to revise the CGMP regulations, FDA will review the guideline and make any necessary changes.

Copies of this final guideline, along with previous drafts and submitted comments, are available for public examination in the Dockets Management Branch (address above).

Interested persons may submit written comments on the final guideline to the Dockets Management Branch. Additional comments will be considered in determining the future need for amending the final guideline. Two copies of comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document.

Dated: January 4, 1994.

**Michael R. Taylor,**

*Deputy Commissioner for Policy.*

[FR Doc. 94–466 Filed 1–7–94; 8:45 am]

BILLING CODE 4160–01–F

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## National Institutes of Health

### National Cancer Institute; Meetings of the Board of Scientific Counselors (BSC), Division of Cancer Prevention and Control and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Division of Cancer Prevention and Control, Board of Scientific Counselors National Cancer Institute, and its Subcommittees on January 20–21, 1994, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will also be held at the times and places listed below. The meetings of the Board will be open to the public from 8:30 a.m. to 3:30 p.m. on January 20 and from 8:30 a.m. to adjournment on January 21 to discuss issues relating to Board business as indicated in the notice. The Subcommittee meetings will be held on January 20 from 8:30 a.m. to 10:30 a.m. and will be open to the public. Attendance by the public to any of these meetings will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed on January 20 from 3:30 p.m. to adjournment for discussion of activities carried out by and through the National Cancer Institute which will include a discussion of extramural/intramural programmatic and personnel policies of a sensitive nature. These discussions could disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of Board members, upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 232, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–8526), upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda M. Bremerman in advance of the meeting.

*Name of Committee:* Board of Scientific Counselors, Division of Cancer Prevention and Control.

*Dates of Meeting:* January 20–21, 1994.

*Place of Meeting:* Building 31 Conference Room 10.

*Open:* January 20–10:45 a.m. to 3:30 p.m. January 21–8:30 a.m. to adjournment.

*Agenda:* Review progress of programs within the Division and review of concepts being considered for funding.

*Closed:* January 20–3:30 p.m. to 5 p.m.

*Agenda:* Extramural/Intramural programmatic and personnel policies of a sensitive nature.

The following open meetings will be held on January 20, 1994, from 8:30 a.m. to 10:30 a.m.

*Name of Committee:* Surveillance Subcommittee.

*Place of Meeting:* Building 31C, Conference Room 9.

*Agenda:* Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding.

*Name of Committee:* Early Detection and Community Oncology Subcommittee.

*Place of Meeting:* Building 31C, Conference Room 10.

*Agenda:* Discuss current and future programs of Early Detection and Community Oncology Subcommittee and review of concepts being considered for funding.

*Name of Committee:* Cancer Control Science Subcommittee.

*Place of Meeting:* Building 31C, Conference Room 8.

*Agenda:* Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding.

*Name of Committee:* Cancer Prevention Research Subcommittee.

*Place of Meeting:* Building 31C, Conference Room 7.

*Agenda:* Discuss current and future programs of Cancer Prevention Research

Subcommittee and review of concepts being considered for funding.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflict schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 4, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–523 Filed 1–7–94; 8:45 a.m.]

BILLING CODE 4140–01–M

## National Institute of Mental Health; Notice of Meeting

The Division of Extramural Activities of the National Institute of Mental Health announces an ad hoc concept review. This committee will be performing review of a Request for Applications entitled "Multi-Site Study of Mental Health Service Use, Need, Outcomes, and Costs for Child and Adolescent Populations (UNO–CAP)."

This meeting will be held January 18, 1994, from 9 a.m. to 1 p.m. at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815, and will be open to the public. Attendance by the public will be limited to space available. Anyone who plans to attend and any individual who needs special assistance, such as sign language interpretation or other reasonable accommodations, should contact Victoria Levin, Parklawn Building, room 9C–15, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1177 by January 14, 1994. Other information pertaining to the meeting may also be obtained from Ms. Levin.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, (301) 443–4333, will provide a summary of the meeting and a roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training: and 93.921, ADAMHA Science Education Partnership Award.)

Dated: January 5, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94–522 Filed 1–7–94; 8:45 am]

BILLING CODE 4140–01–M

# DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[WY–030–94–5101–10–K014; WYW–130382]**

## Wyoming Wind Energy Project; Intent To Prepare an Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS) and to conduct scoping for the U.S. Windpower, Wyoming Wind Energy Project, Carbon County, Wyoming.

**SUMMARY:** Under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management, Rawlins District Office, will direct the preparation of an EIS on the potential impacts of a proposed wind energy project. A total of 1,390 wind turbines and associated facilities will be constructed on 62,000 acres (25,091 hectares) of private, Federal and state lands over a 10–12 year development period in Carbon County, Wyoming. The EIS will be prepared by a third party contractor. If the project is approved, the BLM will issue a Right-of-Way Grant under section 501 of the Federal Land Policy and Management Act of 1976.

**DATES:** Comments will be accepted through February 25, 1994. Public Scoping Meetings will be held at the Jeffrey Center, Third and Spruce Streets, Rawlins, Wyoming on February 2, 1994, at 7 p.m. and on February 3, 1994, at the Albany Country Public Library, Large Meeting Room, 310 S. 8th Street, Laramie, Wyoming, at 7 p.m.

**ADDRESSES:** Comments should be sent to Bureau of Land Management, Rawlins District Office, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, WY 82301, or Bonneville Power Administration (BPA), Office of Energy Resources (R&E), Richard Stone, Environmental Specialist, P.O. Box 3621, Portland, OR 97208.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, WY 82301, phone number (307) 324–7171 or Bonneville Power Administration, Richard Stone, Environmental Specialist, P.O. Box 3621, Portland, OR 97208, phone number (503) 230–3797.

**SUPPLEMENTARY INFORMATION:** U.S. Windpower proposes to construct a 500 megawatt (MW) Wind Energy Project to be located on Foote Creek Rim and Simpson Ridge in Carbon County, Wyoming. The project area is located approximately 40 miles (64.35 Km) southeast of Rawlins and 40 miles (64.36 Km) northwest of Laramie, Wyoming. The Foote Creek Rim portion is in all or portions of approximately 10 sections in Townships 19N and 20N, Ranges 78W and 79W north and west of Arlington. Access to the Foote Creek Rim site is from I–80 and State Highway 13. The Simpson Ridge portion is in all or portions of 92 sections in Townships 20N, 21N, and 22N, Ranges 80W and 81W, south of Hanna. Access to the Simpson Ridge portion is from I–80 and State Highway 287 and State Highway 72. Land ownership in the project area is approximately 62% private, 28% Public (administered by BLM), and 10% State of Wyoming.

The project will be constructed in phases over a 10–12 year period. The first phase, involving 75 MW of electrical power generated by approximately 215 Wind Turbine Generators (WTGs), would be constructed on Foote Creek Rim in 1995–96. Later phases would involve 50MW (approximately 75 WTGs/50 MW) increases per year, as utility contracts are approved, until the 500 MW capacity is reached (for a total of 1,390 WTGs). Ancillary facilities include, but are not limited to: above and below-ground electric and communication lines, access roads, substations, control/maintenance building and transformer sites. The Bonneville Power Administration, Department of Energy, a Cooperating Agency for the EIS, will execute a power output contract to purchase 25 MW of electricity from the project under element 2b of BPA's Resource Supply Expansion Program. The Foote Creek Rim phase of the project would meet this requirement.

The wind turbines will be erected on 80 to 120 ft (24 to 37 m) lattice towers with height determined by specific meteorological and geographic characteristics. The WTGs are variable speed, up-wind, three-fiberglass-bladed machines with a rotor diameter of 108 ft (33 m). The WTGs will be spaced approximately 162 to 216 ft (49 to 66 m) apart with approximately 1,080 to 1,620 ft (329 to 494 m) between each row.

Two potential electrical utility interconnections are proposed. The first is with the PacifiCorp 230 kV system at

the Miner's substation at Hanna, WY. A wood pole 230 kV line would be erected from the project site northwest, approximately 25 mi (40 Km), to the Miner's substation. The second proposed interconnection would be with the Western Area Power Administration's parallel 115 kV lines at a site in T21N, R77W, Sec. 34. A transmission line of approximately 7 mi (11 Km) would extend from the project site northeast to the proposed tap substation.

Dated: January 3, 1994.

**Ray Brubaker,**

*State Director.*

[FR Doc. 94–349 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–22–M

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[AK–930–4410–02–2410–P]

## Availability of Proposed Resource Management Plan and Final Environmental Impact Statement; Fort Greely, Alaska

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of availability of Fort Greely Proposed Resource Management Plan and Final Environmental Impact Statement.

**SUMMARY:** Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606), the Department of the Interior, Bureau of Land Management, Steese/White Mountains District has prepared a Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS) for the Fort Greely military withdrawal, which is located near Delta Junction, Alaska, southeast of Fairbanks. The U.S. Army's 6th Infantry Division (Light) assisted in drafting the plan. The document addresses planning for nonmilitary use of the withdrawal. It addresses questions such as access, recreation, timber and fuel wood harvesting, and wildlife habitat and cultural resource protection. Although mining is discussed, none would be allowed in the immediate future because of potential conflicts with the military's mission.

**DATES:** Protests on the PRMP/FEIS must be postmarked by February 15, 1994.

**ADDRESSES:** Protests on the PRMP/FEIS should be sent to: Bureau of Land Management, Division of Planning and Environmental Coordination (WO–760), 1849 C Street NW. (406 L St.), Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513; phone (907) 271–3369.

**SUPPLEMENTARY INFORMATION:** The PRMP/FEIS is available by contacting Jim Ducker at the address or phone number listed above.

The Proposed Plan refines the Preferred Alternative presented in the Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS). These refinements are the result of comments from the public and the availability of information developed since the distribution of the draft.

The PRMP/FEIS describes the Proposed Plan and its impacts in full and presents summaries of five alternatives and their impacts. Complete descriptions of the alternatives and their impacts can be found in the DRMP/DEIS which are available at the main public libraries in Fairbanks, Delta Junction, and Anchorage, and at the Steese/White Mountains District Office in Fairbanks and the Alaska State Office in Anchorage.

Dated: December 29, 1993.

**Roger Bolstad,**

*District Manager, Steese/White Mountains District.*

[FR Doc. 94–417 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–JA–P

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[AK–930–4410–02–2410–P]

## Availability of Proposed Resource Management Plan and Final Environmental Impact Statement; Fort Wainwright, Alaska

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of availability of Fort Wainwright Proposed Resource Management Plan and Final Environmental Impact Statement.

**SUMMARY:** Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606), the Department of the Interior, Bureau of Land Management, Steese/White Mountains District, has prepared a Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS) for the portion of the Fort Wainwright military withdrawal known as the Yukon Maneuver Area. This tract is southeast of Fairbanks, and adjacent to and east and north of Eielson Air Force Base. The U.S. Army's 6th Infantry Division (Light) assisted in drafting the plan. The document addresses planning for nonmilitary use of the withdrawal. It addresses questions such as access, recreation, timber and fuel wood harvesting, and wildlife habitat and cultural resource protection. Although mining is discussed, none would be allowed in the immediate future because of potential conflicts with the military's mission.

**DATES:** Protests on the PRMP/FEIS must be postmarked by February 15, 1994.

**ADDRESSES:** Protests on the PRMP/FEIS should be sent to: Bureau of Land Management, Division of Planning and Environmental Coordination (WO–760), 1849 C Street NW. (406 L St.), Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513; phone (907) 271–3369.

**SUPPLEMENTARY INFORMATION:** The PRMP/FEIS is available by contacting Jim Ducker at the address or phone number listed above.

The Proposed Plan refines the Preferred Alternative presented in the Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS). These refinements are the result of comments from the public and the availability of information developed since the distribution of the draft.

The PRMP/FEIS describes the Proposed Plan and its impacts in full and presents summaries of five alternatives and their impacts. Complete descriptions of the alternatives and their impacts can be found in the DRMP/DEIS which are available at the main public libraries in Fairbanks and Anchorage and at the Steese/White Mountains District Office in Fairbanks and the Alaska State Office in Anchorage.

Dated: December 29, 1993.

**Roger Bolstad,**

*District Manager, Steese/White Mountains District.*

[FR Doc. 94–416 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–JA–P

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# National Park Service

## Chesapeake and Ohio Canal National Historical Park Commission Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a special meeting will be held at 10:00 a.m., Saturday, January 22, 1994, at Ferry Hill headquarters, 16500 Shepherdstown Pike, Route 34, West, Sharpsburg, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and

development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC

Ms. Diane C. Ellis, Brunswick, Maryland

Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland

Ms. Anne L. Gormer, Cumberland, Maryland

Ms. Elise B. Heinz, Arlington, Virginia

Mr. George M. Wykoff, Jr., Cumberland, Maryland

Mr. Rockwood H. Foster, Washington, DC

Mr. Barry A. Passett, Washington, DC

Mrs. Jo Reynolds, Potomac, Maryland

Ms. Nancy C. Long, Glen Echo, Maryland

Ms. Mary Elizabeth Woodward, Shepherdstown, West Virginia

Dr. James H. Gilford, Frederick, Maryland

Mr. Edward K. Miller, Hagerstown, Maryland

Mrs. Sue Ann Sullivan, Williamsport, Maryland

Mr. Terry W. Hepburn, Hancock, Maryland

Mr. Laidley E. McCoy, Charleston, West Virginia

Ms. Jo Ann M. Spevacek, Burke, Virginia

Mr. Charles J. Weir, Falls Church, Virginia

The purpose of this special meeting is to hear the recommendation of the special committee on the Cumberland Environmental Impact Statement (EIS) and reach a decision on a formal position on the EIS.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matter to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: December 28, 1993.

**Chrysandra L. Walter,**

*Regional Director, National Capital Region.*

[FR Doc. 94–404 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–70–M

## Bureau of Reclamation

**[Docket No. 93–29700]**

### Environmental Impact Statement Related to New Rules and Regulations for Implementing the Reclamation Reform Act of 1982

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of additional meeting.

**SUMMARY:** The Bureau of Reclamation is amending the notice of intent published in 58 FR 64336, Dec. 6, 1993 to add a scoping meeting in Boise, Idaho.

**DATE AND ADDRESS:** This additional scoping meeting is scheduled for:

• Boise, Idaho; January 24, 1994, Bureau of Reclamation's Regional Office, room 204, 1150 North Curtis Road, 1 p.m. to 3 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rusty Schuster, Attention: D–5604, Bureau of Reclamation, PO Box 25007, Denver CO 80225. To be placed on a mailing list for any subsequent information, either write Mr. Schuster or telephone (303) 236–1061, extension 237.

Dated: January 4, 1994.

**J. William McDonald,**

*Assistant Commissioner—Resources Management.*

[FR Doc. 94–450 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–94–M

## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 55 (Sub-No. 93)]**

### Passenger Operations by Mexican Motor Carriers—Implementation of North American Free Trade Agreement

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of policy statement.

**SUMMARY:** The purpose of this Notice is to announce implementation of the provisions of the first phase of the North American Free Trade Agreement (NAFTA) relating to land transportation. Effective January 1, 1994, the Commission will accept and process applications by Mexican passenger carriers for operating authority to provide charter and tour bus service across the United States-Mexico International Border line into the United States.

**DATES:** The policy announced here will apply to applications filed on or after January 1, 1994. Comments must be filed by January 18, 1994.

**ADDRESSES:** Send comments referring to Ex Parte No. 55 (Sub-No. 93) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Joseph B. O'Malley (202) 927–6292, or Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

**SUPPLEMENTARY INFORMATION:** Section 6 of the Bus Regulatory Reform Act of 1982 (codified at 49 U.S.C. 10922(l)) imposed a 2-year moratorium (subject to renewal) on the Commission's issuance of new grants of operating authority to motor carriers domiciled in or owned or controlled by persons of Mexico or Canada. Under this statute, the President has the authority to remove or modify the moratorium if he determines it to be in the national interest, that is, if overriding economic or foreign policy considerations make such an action advisable, or if a negotiated settlement with one country or the other can be reached. Under the moratorium, the President must notify the Congress in writing 60 days before the date on which the removal or modification is to take effect.

Shortly after it went into effect, the President exercised his authority and removed the moratorium with respect to Canada. The President indicated in a memorandum to the United States Trade Representative that the United States and Canada had reached a bilateral understanding that would ensure fair and equitable treatment for both U.S. and Mexican motor carriers on both sides of the International Boundary line. 47 FR 54053.

The moratorium remained in place for Mexican motor carriers because the Mexican Government continued to restrict U.S. motor carriers' access to Mexico. Under the terms of the statute, the President extended the moratorium for 2-year periods in 1984, 1986, 1988, 1990, and, most recently, in 1992. On November 3, 1993, however, in a Statement of Administrative Action, the President gave notice to Congress that he would lift the moratorium with respect to Mexican charter and other tour services on NAFTA's effective date, that is, on January 1, 1994.[1]

Under NAFTA, the moratorium will be lifted in phases.[2] The schedule of liberalization is as follows:

[1] This satisfies the 60-day notice period called for under 49 U.S.C. 10922(l). In any event, Congress, in approving NAFTA, specifically consented to the President's modifying the moratorium as announced on November 3, 1993.

[2] The NAFTA schedule of liberalization does not remove all barriers for Mexican motor carrier operations in the United States. The moratorium will remain in place for Mexican carriers in the one

1. Upon entry into force of NAFTA, for access by Mexican charter and tour bus operators;
2. Three years after signature of NAFTA, for access by Mexican motor property carriers into United States border States, and for establishing companies to distribute international cargo within the United States;
3. Three years after entry into force, for access by Mexican regular-route passenger carriers;
4. Six years after entry into force, access for cross-border operations by Mexican motor property carriers.

In Phase 1 of NAFTA, Mexican domiciled or owned or controlled passenger carriers may now apply for authority under 49 U.S.C. 10922(c) to transport passengers in charter and tour bus service in the United States in foreign commerce, that is, the service must begin or end in Mexico (or Canada). Wholly domestic interstate operations in the United States cannot be authorized or permitted.

NAFTA authorizes the granting of authority for charter operations and tour bus service only. By statute, we may authorize motor common carriers of passengers to operate over either regular or irregular routes, but irregular-route services must be limited to charter and special operations. Regular-route operations ordinarily involve the expeditious transportation of passengers between fixed termini, over defined routes and according to established schedules. Charter operations, on the other hand, ordinarily contemplate providing transportation for a group, assembled by someone other than the carrier, which group contracts for the exclusive use of certain equipment for the duration of a particular trip or tour. Generally, a flat rate for the use of the vehicle is charged, on either a "mileage" or an "hourly" basis, and the passengers travel together for the entire trip.

As we recognized most recently in Adirondack Transit Lines, Inc.—Adirondack Trailways, 8 I.C.C.2d 330, 334 n.5 (1992), special operations originally were described as services rendered (generally on weekends, holidays, or other special occasions) to a number of passengers that the carrier itself has assembled into a travel group through its own sales of a ticket to each individual passenger covering a particular trip or tour. Fordham Bus Corp. Common Carrier Application, 29 M.C.C. 293, 297 (1941). In *Asbury Park-N.Y. Transit Corp.* v. *Bingler Vacation Tours*, 62 M.C.C. 731, 740 (1954) (*Bingler*), aff'd sub nom. *Bingler Vacation Tours* v. *United States*, 132 F. Supp. 793 (D. N.J. 1955), aff'd per curiam, 350 U.S. 921 (1955), though, the Commission adopted the position that "special operations" is a catchall classification, which may include almost anything that is neither charter operations nor the usual operations of a regular-route carrier.

Accordingly, "tour service" is only one form of special operations, as the Commission discussed in Passenger Transportation in Special Operations, 112 M.C.C. 160, 165–67, 171–74 (1970), which clearly distinguishes the requirements of "tour service" from those of ordinary special operations. Thus, under the Bingler criterion, to constitute a "tour service", the carrier must furnish something substantial in addition to, or different from, bare expeditious transportation between two points. This contemplates a common interest of passengers visiting a particular place(s) or event(s) and does not include ordinary, point-to-point transportation, over either regular or irregular routes.[3] It appears that the "tour service" that NAFTA is intended to cover is this type of special operations.

Accordingly, certificates that we issue to Mexican carriers will usually be framed, in accord with our usual practices with regard to such authorities, to authorize service Over irregular routes, in foreign commerce, transporting passengers, in charter operations and in special operations, in tour service, between ports of entry on the international boundary between the U.S. and Mexico, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

Because this notice is occasioned by a partial lifting of the moratorium, no special rules or rulemaking are necessary. The same application procedure and regulations apply to Mexican and United States carriers alike. For example, carriers must abide by all U.S. Department of Transportation safety regulations, comply with the Commission's insurance requirements (49 U.S.C. 10927), publish and file with the Commission applicable tariffs (49 U.S.C. 10761, 10762), and file with the Commission agents for service of process (49 U.S.C. 10330). We will, however, provide a short comment period to enable interested persons to submit written views, arguments or representations regarding this subject. Because we have little or no discretion in this area, we do not contemplate a subsequent decision unless we receive comments raising substantial issues it would be helpful or necessary to address. Notice of this proceeding will be published in the **Federal Register** and the *ICC Register* and interested parties will have 7 days from the date of publication to comment.

Finally, the current application form OP–1 requires all applicants for ICC operating authority to certify that they are not domiciled in Mexico or owned or controlled by persons of Mexico. We will modify that certification requirement when we revise the application form. For the present, Mexican charter and special operations applicants should either disregard the certification section, or simply indicate "not applicable." Applicants not completing the certification affirmatively will receive charter and special operations tour service authority limited to movements in foreign commerce.

*Decided: December 30, 1993.*

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–503 Filed 1–7–94; 8:45 am]

BILLING CODE 7035–01–P

area that was not liberalized, namely, point to point carriage of domestic cargo in the United States.

[3] Special operations that are not "tour services" might include, for example, limousine services in which door-to-door service is provided, over irregular routes (according to the specific locations to be served on any particular trip), to and from any point in a given territory. Such services will not be authorized by authority to provide "tour service".

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**[Finance Docket No. 32446]**

## Soo Line Railroad Co.—Trackage Rights—Over a Line of Chicago, Central and Pacific Railroad Co. in Rockford, IL

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345, the acquisition by Soo Line Railroad Company of temporary overhead trackage rights over approximately 4 miles of Chicago, Central and Pacific Railroad Company rail line in Rockford, IL, subject to conditions.

**DATES:** The exemption became effective on January 6, 1994. Petitions to reopen must be filed by January 31, 1994.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 32446 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2)

petitioner's representatives, Terence M. Hynes and Molly A. Meegan, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder (202) 927–5610; TDD for the hearing impaired: (202) 927–5721.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: January 5, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin.

**Sidney L. Strickland, Jr.,**

*Secretary.*

[FR Doc. 94–609 Filed 1–7–94; 8:45 am]

BILLING CODE 7035–01–P

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Corporation for Open Systems International; Notice Pursuant to the National Cooperative Research and Production Act of 1993

Notice is hereby given that, on October 20, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Electric Power Research Institute, Inc., Palo Alto, CA, became a member of COS on July 23, 1993; (2) Xerox Corporation and the Foxboro Company ceased membership in COS effective August 2, 1993 and August 31, 1993, respectively; (3) COS was advised that the name of Defense Communications Agency, a member of COS, was changed to Defense Information Systems Agency; (4) COS was advised that the name of Honeywell Bull, a member of COS, was changed to Bull HN Information Systems, Inc.; and (5) COS was advised that Control Data Corporation, a member of COS, has been reorganized and that its membership in COS would be continued by Control Data Systems, Inc.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, (51 FR 21260).

The last notification was filed with the Department on July 20, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 23, 1993 (58 FR 49527).

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 94–492 Filed 1–7–94; 8:45 am]

BILLING CODE 4410–01–M

## LIBRARY OF CONGRESS

### Copyright Office

[Docket No. RM 93-13]

### General Provisions - Copyright Restoration of Certain Mexican and Canadian Works

**AGENCY:** Copyright Office; Library of Congress.

**ACTION:** Notice of policy decision.

**SUMMARY:** The Copyright Office publishes this notice to inform the public that the North American Free Trade Agreement which entered into force on January 1, 1994, and its implementing legislation (Pub. L. No. 103-182) authorizes the Copyright Office to establish procedures for copyright restoration of certain works first fixed or published in Mexico or Canada after January 1, 1978 and before March 1, 1989. This notice is intended to summarize the content of that legislation. Copyright owners of affected works must file a statement of intent with the Copyright Office to restore copyright for eligible works; details of new procedures to file these statements will be published within the next 60 days.

**FOR FURTHER INFORMATION CONTACT:** Eric Schwartz, Policy Planning Advisor, Copyright Office, Library of Congress, Washington, D.C. 20540. Telephone: (202) 707-8350. Fax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** The North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act (Pub. L. No. 103-182) provide for the restoration of copyright for certain works that are currently in the public domain in the United States. Under new section 104A of title 17, copyright protection may be restored for certain motion pictures that were first fixed or published in Mexico or Canada, and any work included in such motion pictures that was first fixed or published with these motion pictures, if the work "entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by sections 401, 402, or 403 of [title 17], the absence of which has not been excused by the operation of section 405 of [title 17], as such sections were in effect during that period." 17 U.S.C. 104A(a) (1993). A motion picture or underlying work (such as original music or dramatic text embodied in the motion picture) meeting these requirements "shall have copyright protection under [title 17] for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice." *Id.*

Copyright owners of qualifying works must file a "statement of intent" with the Copyright Office between January 1, 1994 (the date on which the Agreement entered into force) and January 1, 1995 to notify the public of their intent to restore copyright protection for these works in the United States. After January 1, 1995, the Copyright Office must publish in the Federal Register, the list of works for which statements have been filed and which are determined to be properly qualified for protection. The restoration of copyright protection for these works will be provided at that time in accordance with section 104A of title 17. Section 104A(c) of title 17 provides that persons who are copying, performing or selling copies of such works may continue such activities for a period of one year following publication of the 1995 Federal Register notice. This exemption applies only to copies produced or acquired before the date of enactment of the implementing legislation (December 8, 1993).

Within the next 60 days, the Copyright Office will announce in the Federal Register the procedures necessary to file a "statement of intent" with the Office, including the applicable statements and materials that must be submitted. In the meantime, copyright owners and other interested parties can contact Eric Schwartz, Policy Planning Advisor, Copyright Office, at (202) 707-8350, for additional information.

January 3, 1994.

**Barbara Ringer,**

*Acting Register of Copyrights.*

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 94-441 Filed 1-7-94;8:45am]

BILLING CODE: 1410-07F

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Wednesday and Thursday, January 19–20, 1994, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9 a.m. on each day in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

**Donald A. Young,**

*Executive Director.*

[FR Doc. 94–209 Filed 1–7–94; 8:45 am]

BILLING CODE 6820–BW–M

## SECURITIES AND EXCHANGE COMMISSION

### Requests Under Review by Office of Management and Budget

Agency Clearance Office—John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension

Rule 19d–2

File No. 270–204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 34501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for extension of Office of Management and Budget approval Rule 19d–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). Rule 19d–2 prescribes the form and content of applications to the Commission for stays of final disciplinary sanctions and summary actions of self-regulatory organizations. It is anticipated that approximately 30 respondents will spend a total of 90 hours complying with Rule 19d–2.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (3235–0205), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 3, 1994.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94–482 Filed 1–7–94; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–33410; File No. SR–Phlx–93–62]**

### Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Discount of its Transaction, Comparison and Floor Brokerage Transaction and Assessment Fees for November 29, 1993 to December 31, 1993

January 4, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to discount its transaction, comparison and floor brokerage transaction and assessment fees encompassing all transactions executed on the Phlx in equities, equity options, index options and foreign currency options on the Phlx for the billing cycle beginning settlement date November 29, 1993, to settlement date December 31, 1993. The discount shall be a 33 percent reduction across-the-board for all fees, charges and assessments as described above.[1]

#### 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*

1. Purpose

The Exchange seeks to discount its transaction, comparison and floor brokerage transaction and assessment fees encompassing all transactions executed on the Phlx in equities, equity options, index options and foreign currency options on the Phlx for the billing cycle beginning settlement date November 29, 1993, to settlement date December 31, 1993. The discount shall be a 33 percent reduction across-the-board for all fees, charges and assessments as described above for the limited period from November 29, 1993, to December 31, 1993 (Phlx's final month's billing cycle) in recognition of record volume and cost efficiencies anticipated to continue through December. In this regard, discounts will not apply to non-transaction related fees and charges such as the floor facilities fees, booth and post rental fees, as well as membership dues, etc.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities. The proposed fee schedule change also aligns service fees more closely to the cost of providing those services.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[1] The Phlx proposes to discount the following fees, charges and assessments: Equity Transaction Value Charge; Equity Floor Brokerage Assessment; Equity Floor Brokerage Transaction Fee; Option Comparison Charge; Option Transaction Charge; Option Floor Brokerage Assessment; Floor Brokerage Transaction Fee; Option Comparison Charge; Option Transaction Charge; Option Floor Brokerage Assessment; Floor Broker Transaction Fee; Option Comparison Charge; Option Transaction Charge; Option Floor Brokerage Assessment; Floor Broker Transaction Fee; and Volume Discount For Currency Option Transaction Charge Activity.

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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 Room. Copies of the 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-93-62 and should be submitted by January 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 94-430 Filed 1-7-94; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

### DSC Ventures II, LP

**[License No. 09/09-0391]**

### Surrender of License

Notice is hereby given that DSC Ventures II, LP, 20111 Stevens Creek Boulevard, Cupertino, California 95014, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act).

DSC Ventures II, LP was licensed by the Small Business Administration on March 1, 1991.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 14, 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: December 22, 1993.

**Charles R. Hertzberg,**

*Associate Administrator for Investment.*

[FR Doc. 94-475 Filed 1-7-94; 8:45 am]

BILLING CODE 8025-01-M

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**[License # 01/01-0340]**

### Monarch-Narragansett Ventures, Inc., Notice of License Surrender

Notice is hereby given that Monarch-Narragansett Ventures, Inc., ("MNVI"), Monarch Place, 1414 Main Street, Springfield, Massachusetts 01144, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). MNVI was licensed by the Small Business Administration on December 8, 1986.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 3, 1933, 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: December 6, 1993.

**Charles R. Hertzberg,**

*Associate Administrator for Investment.*

[FR Doc. 94-476 Filed 1-7-94; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ended December 30, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49337
*Date filed:* December 30, 1993
*Parties:* Members of the International Air Transport Association
*Subject:*
TC31 Resp/P 1009 dated November 5, 1993
North & Central Pacific Resos r-1 to r-3
TC31 Reso/P 1010 dated November 5, 1993
TC3 (EXc. Japan)—N.Amer./Caribbean r-4 to r-18
TC31 Reso/P 1011 dated November 5, 1993
Japan-North America/Caribbean r-19 to r-33
TC31 Reso/P 1012 dated November 5, 1993
TC3-Central/South America Resos r-34 to r-45
*Proposed Effective Date:* April 1, 1994

**Phyllis T. Kaylor,**

*Chief Documentary Services Division.*

[FR Doc. 94-483 Filed 1-7-94; 8:45 am]

BILLING CODE 4910-62-P

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### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 30, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49339
*Date Filed:* December 30, 1993
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 27, 1994
*Description:* Application of Czechoslovak Airlines, pursuant to

Section 402 of the Act and Subpart Q of the Regulations, requests renewal of its permit authority so as to permit CSA to continue to conduct its operations to and from the United States fully in accordance with the terms of the Bilateral Aviation Agreement in effect between the United States and the Czech Republic (formerly Czechoslovakia).

*Docket Number:* 49341

*Date Filed:* December 30, 1993

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 27, 1994

*Description:* Application of Aries Del Sur Sociedad Anonima Transportes Aereos De Carga, pursuant to section 402 of the Act and subpart Q of the Regulations, requests the issuance of a Foreign Air Carrier Permit authorizing it to engage in nonscheduled foreign air transportation of property and mail between a point or points in Argentina, via the intermediate points Sao Paulo and Rio de Janeiro, Brazil, to the coterminal points Miami and New York and beyond to Montreal, Canada; between a point or points in Argentina, via the intermediate points Santiago, Chile; La Paz, Bolivia; Lima, Peru; Guayaquil or Quito, Ecuador; and Bogota, Colombia; to the coterminal points Miami and New York; between a point or points in Argentina, via the intermediate points La Paz, Bolivia; Lima, Peru; Guayaquil or Quito, Ecuador; Bogota, Colombia; and Mexico City, Mexico; to the terminal point Los Angeles; and between a point or points in Argentina, via the intermediate point Caracas, Venezuela, to the coterminal points Miami and New York; and to engage in charter foreign air transportation of property and mail between a point or points in Argentina and a point or points in the United States, its territories and possessions, and between a point or points in third countries and a point or points in the United States, its territories, and possessions.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 94–484 Filed 1–7–94; 8:45 am]

BILLING CODE 4910–62–P

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## Coast Guard

[CGD 91–202]

RIN 2115–AE10

## Escort Vessels for Certain Oil Tankers

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** A two-part study assessing the capability of escort tugs to control disabled tankers in Prince William Sound, Alaska, was commissioned by the Disabled Tanker Towing Study Group (DTTSG). The study will specifically review the present equipment, personnel, and procedures aboard the tankers and escort vessels operating in Prince William Sound, as well as the assist capabilities of the vessels presently in service for escorting these tankers. Part 1 of the study has been completed, and the U.S. Coast Guard has been granted permission to make it available to the public. Certain technical findings of this study will aid the U.S. Coast Guard in promulgating national-level tug escort regulations under section 4116(c) of the Oil Pollution Act of 1990 (OPA 90).

**ADDRESSES:** Part 1 of the Prince William Sound Disabled Tanker Towing Study, entitled "Evaluation of Existing Equipment, Personnel and Procedures," is available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays. The telephone number is (202) 267–1477.

Additionally, copies of Part 1 of the study may be ordered from the National Technical Information Service, Springfield, VA 22161 (phone orders (703) 487–4650). The NTIS publication number is PB94–120961; price $27.00 for paper copy, or $12.50 for microfiche copy.

**FOR FURTHER INFORMATION CONTACT:** Thomas Jordan, Project Manager, OPA 90 Staff, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or by phone at (202) 267–6751.

**SUPPLEMENTARY INFORMATION:**

### Background and Discussion

In the aftermath of the EXXON VALDEZ grounding, the state of Alaska established a contingency plan that includes provisions requiring laden tankers to be escorted through Prince William Sound. The escort vessels are expected to provide immediate assistance to a tanker in the event it suffers a propulsion or steering failure. The escort vessels also have some spill response capabilities. At present, there are 11 tugs and escort vessels in this service, operating out of Port Valdez and escorting tankers to Hinchinbrook Entrance.

The Disabled Tanker Towing Study Group (DTTSG) was formed to review the present escort vessel practices in Prince William Sound. The DTTSG is formed of representatives from the Regional Citizen's Advisory Council (RCAC) for Prince William Sound, the Prince William Sound Tanker Association, the Alyeska Pipeline Service Company, the Alaska Department of Environmental Conservation, and the U.S. Coast Guard.

The DTTSG commissioned The Glosten Associates, Inc., to prepare a two-part study. The first part was to conduct an expert review and evaluation of the emergency towing equipment aboard the tankers and escort vessels operating in Prince William Sound. The second part was to determine, by means of actual tanker/tug trials and computer simulation analyses, the capabilities of the escort vessels to actually control disabled tankers.

### The Oil Pollution Act of 1990 (OPA 90)

Section 4116(c) of OPA 90 requires the Secretary of Transportation to initiate issuance of regulations that define areas where single hull tankers over 5,000 gross tons transporting oil in bulk must be escorted by at least two towing vessels (as defined under 46 U.S.C. 2101), or by other vessels which the Secretary considers appropriate. These defined areas must include Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to U.S. jurisdiction). The Secretary has delegated this responsibility to the Coast Guard.

### Federal Regulatory Action to Date

The Coast Guard's regulatory response to this section of OPA 90 has been divided into two rulemaking projects: the first project (CGD 91–202) focuses on the Prince William Sound and Puget Sound waters specifically identified in the statute, the second project (CGD 91–202a) focuses on other navigable waters where escorts might be required.

In order to issue effective national escort rules, the Coast Guard finds it necessary to determine the realistic capabilities of the various types of tugs that may be used for escort service. To this end, the Disabled Tanker Towing Study (DTTS) is expected to provide valuable technical information. In addition to its participation in the DTTSG, Coast Guard's other actions to date have been as follows:

(1) A notice of proposed rulemaking (NPRM) for the Prince William Sound

and Puget Sound waters was published in the **Federal Register** on July 7, 1992 (57 FR 30058). Because the original public comments did not include sufficient information on certain issues, the comment period was reopened March 26, 1993 (58 FR 16391), with a request for more-detailed comments on some specified issues. Altogether, more than 100 public comments were received.

(2) An advance notice of proposed rulemaking (ANPRM) seeking public comment on other navigable waters where escort vessels should be required was published April 27, 1993 (58 FR 25766). This ANPRM also requested detailed comments on some specified issues. More than 45 public comments were received.

(3) Three public hearings were held: in Anchorage, Alaska, on June 3, 1993; Valdez, Alaska, on June 5, 1993; and Seattle, Washington, on June 7, 1993. Both Alaska hearings had teleconferencing arrangements to include outlying communities in the Exxon Valdez impacted areas. All three hearings were well attended. Locally-interested parties, including individuals and representatives of environmental, commercial fishing, and recreational groups, tug operators, pilots, and tanker operators, made presentations at each hearing. Transcripts of the three hearings have been put in files 43, 44, and 45 of Coast Guard docket 91–202a.

**Summary of the Study**

The Executive Summary from Part 1 of the DTTS, "Evaluation of Existing Equipment, Personnel and Procedures," is reprinted here verbatim:

"This study has been undertaken by The Glosten Associates, Inc., to evaluate the existing capability for emergency towing at Prince William Sound and to examine alternatives that could enhance the escort and assist capabilities for disabled tankers within the waterway from the Alyeska Oil Terminal at the Port of Valdez to the Gulf of Alaska outside Hinchinbrook Entrance.

Part 1, reported herein, is an objective evaluation by an experienced salvage towing master of the existing tugs, emergency towing equipment, towing practices, and discussion of alternate tug types. Part 2 will evaluate alternative equipment and deployments, using engineering methods, including simulation, that could improve the safety or cost-effectiveness of the response system.

The Part 1 investigation was performed by subcontractor Smit Tak BV, based in Rotterdam. Captain Jan ter Haar, a senior Smit Tak salvage master, conducted interviews and observed normal operations and emergency drills in the Valdez area.

Captain ter Haar feels that, with some changes such as improved bow fendering, the existing escort/response vessels (ERVs) are adequate to control a ship's heading in the event of a steering failure and to tow it in the event of loss of propulsive power. He reserves any final opinion on the number of such vessels required to control an incident, in relation to the size of tanker and the weather conditions, to the results of simulations in Part 2.

All tankers calling at Valdez are required to carry specific emergency towing gear for rapid deployment and connection to a rescue tug. This "Prince William Sound Emergency Towing Package" is stowed and deployed differently on various vessels. Captain ter Haar recommends that all vessels adopt systems that can be readied for deployment in 15 minutes or less by a crew of two without using winch power.

Captain ter Haar demonstrated in drills several effective alternative methods of making towing connections with the tugs' own gear, without deploying the ship's Prince William Sound Towing Package. Drills were also used to assess crew skills in towing large tankers in adverse weather with multiple tugs. He concludes that additional drills and training, both in the makeup and towing operations, would be beneficial.

With regard to escort vessel operations, Captain ter Haar recommends that, in the Valdez Narrows area, escort position should be in close proximity to tankers for faster response to a steering failure. However, in the more open waters of Prince William Sound, where a power or steering failure will not result in immediate peril of grounding, close escort does not increase the level of safety of the system. Escort vessels strategically positioned at key locations would appear to provide the same level of protection. This deployment issue will be analyzed more thoroughly in Part 2.

Captain ter Haar concludes that the vessels presently under contract are suitable for rescue towing in Prince William Sound under a full range of weather conditions. In the open waters of the Gulf of Alaska, at and beyond Hinchinbrook Entrance, he concludes that a larger salvage tug would improve the capability to prevent a major casualty."

**Anticipated Course of Action**

The second phase of the DTTS (tanker/tug maneuvering trials and computer simulation analyses) is currently underway. The Coast Guard has been informed that the technical data collection should be completed by January, 1994, and that Part 2 of the study will be released by spring, 1994.

In the meantime, the Coast Guard is now reviewing all public comments and studying various technical submittals, including Part 1 of the DTTS. Because the Federal regulations that it ultimately proposes as a result of this review will probably differ from those proposed in the NPRM, the Coast Guard plans to issue a Supplementary Notice of Proposed Rulemaking (SNPRM). The Coast Guard anticipates issuing the SNPRM after Part 2 of the study has been reviewed and analyzed.

Dated: January 4, 1994.

**W. J. Ecker,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services*

[FR Doc. 94–487 Filed 1–7–94; 8:45 am]

BILLING CODE 4910–14–M

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## Federal Aviation Administration

### Intent To Rule on Application To Impose and Use and Impose Only the Revenue From a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Pullman, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pullman-Moscow Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

This document supersedes the notice, "Intent to rule on application to impose and use and impose only the revenue from a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Pullman, Washington", published on December 29, 1993 (58 FR 68985).

**DATES:** Comments must be received on or before February 9, 1994.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must

be mailed or delivered to Mr. David Crowner, airport Manager at the following address: Pullman-Moscow Regional Airport, 3200 Airport Complex N., Pullman, WA 99163.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Pullman-Moscow Regional Airport under § 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Vargas, (206) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pullman-Moscow Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pullman, WA and the City of Pullman, WA and the City of Moscow, ID was substantially complete with the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 22, 1994.

The following is a brief overview of the application.

*Level of the proposed PFC:* 3.00

*Proposed charge effective date:* April 1, 1994

*Proposed charge expiration date:* October 31, 1997

*Total estimated PFC revenue:* $169,287.65

*Brief description of proposed project(s):* Impose and Use projects: Runway 5/23 rehabilitation, runway and taxiway signage, lighting upgrade and runway 5 safety area stabilization, master plan update, aircraft rescue and fire fighting (ARFF) vehicle acquisition and storm water pollution prevention plan development, modify ARFF building and expand general aviation (GA) apron.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Only those Air taxi's defined as follows: the carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, on an "on-demand" basis with aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pullman.

Issued in Renton, Washington on December 22, 1993.

**Edward G. Tatum,**

*Manager, Airports Division, Northwest Mountain Region.*

[FR Doc. 94–248 Filed 1–7–94; 8:45 am]

BILLING CODE 4910–13–M

## UNITED STATES INFORMATION AGENCY

### Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Egon Schiele" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the National Gallery of Art, Washington, DC from on or about February 6, 1994, to on or about May 8, 1994; at the Indianapolis Museum of Art, Indianapolis, IN from on or about June 11, 1994, to on or about August 6, 1994; and the San Diego Museum of Art, San Diego, CA from on or about August 27, 1994, to on or about October 30, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 4, 1994.

**R. Wallace Stuart,**

*Acting General Counsel.*

[FR Doc. 94–418 Filed 1–7–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Nelia Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

# Sunshine Act Meetings

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

**DATE AND TIME:** January 12, 1994, 10:00 a.m.

**PLACE:** 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro, 992nd Meeting—January 12, 1994, Regular Meeting (10:00 a.m.)**

CAH–1.
Project No. 8369–024, Village of Saranac Lake
CAH–2.
Project No. 553–020, City of Seattle, Washington
CAH–3.
Project No. 8436–092, Smith Falls Hydropower
CAH–4.
Project No. 5223–021, International Falls Power Company
CAH–5.
Project No. 2519–004, Central Maine Power Company

**Consent Agenda—Electric**

CAE–1.
Docket No. ER93–985–000, New England Power Pool
CAE–2.
Docket No. ER94–129–000, Massachusetts Electric Company
CAE–3.
Docket No. ER94–166–000, Gulf States Utilities Company
CAE–4.
Docket No. ER94–52–000, Upper Peninsula Power Company
CAE–5.
Docket No. ER93–254–001, Consolidated Edison Company of New York, Inc.
CAE–6.
Docket No. EF93–5091–001, Western Area Power Administration
CAE–7.
Docket No. ER93–938–002, Southwestern Electric Power Company
CAE–8.
Docket No. ER92–183–003, Florida Power Corporation
CAE–9.
Docket No. ER93–219–001, Western Massachusetts Electric Company
CAE–10.
Docket No. QF90–143–002, Yuma Cogeneration Associates
CAE–11.
Docket No. ER93–251–001, Wisconsin Electric Power Company
CAE–12.
Omitted
CAE–13.
Omitted
CAE–14.
Omitted
CAE–15.
Docket No. EL92–41–000, Nevada Power Company

**Consent Agenda—Oil and Gas**

CAG–1.
Docket No. RS92–15–000, Equitrans, Inc.
CAG–2.
Docket No. RP94–80–000, National Fuel Gas Supply Corporation
CAG–3.
Docket Nos. RP93–56–003, RP93–86–003 and RP93–139–003, Transwestern Pipeline Company
CAG–4.
Docket No. PR93–12–000, Dow Intrastate Gas Company
CAG–5.
Docket Nos. RP91–161–014, *et al.*, RP92–3–000, *et al.*, RP90–108–016, RP91–82–008 and RS92–5–000, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–011, *et al.*, RP92–2–000, *et al.*, RP90–107–013 and RS92–6–000, Columbia Gulf Transmission Company
CAG–6.
Docket Nos. RP93–192–002 and 004, Texas Eastern Transmission Corporation
CAG–7.
Docket No. RP94–63–000, Black Marlin Pipeline Company
CAG–8.
Docket No. RP94–77–000, Mojave Pipeline Company
CAG–9.
Docket Nos. RP92–104–008 and RP92–131–009, K N Energy, Inc.
CAG–10.
Docket Nos. RP91–224–012 and RP92–1–018, Northern Natural Gas Company
CAG–11.
Docket No. IS94–4–001, All American Pipeline Company
CAG–12.
Docket Nos. RP85–203–013 and RP88–203–010, Panhandle Eastern Pipe Line Company
Docket No. RP85–202–011, Trunkline Gas Company
Docket Nos. RP93–127–001, 002 and RP93–102–002, Columbia Gas Transmission Corporation
CAG–13.
Docket No. RP85–170–009, Texas Eastern Transmission Corporation
CAG–14.
Docket No. RP85–181–006, Texas Gas Transmission Corporation
CAG–15.
Docket No. CP93–707–001, Transcontinental Gas Pipe Line Corporation
CAG–16.
Docket No. CP92–459–001, Texas Eastern Transmission Corporation
Docket No. CP92–460–001, Trunkline Gas Company
CAG–17.
Docket No. CP93–75–001, Sunrise Energy Company v. Transwestern Pipeline Company
CAG–18.
Docket No. CP93–520–000, Texas Gas Transmission Corporation
CAG–19.
Docket No. CP93–183–000, Northern Natural Gas Company and Continental Gas Storage, L.P.
CAG–20.
Docket No. CP93–304–000, Northern Natural Gas Company
CAG–21.
Docket No. CP92–508–000, Penn-York Energy Corporation and National Fuel Gas Supply Corporation
CAG–22.
Omitted
CAG–23.
Docket No. CP93–750–000, Western Resources, Inc. and Southern Union Company d/b/a Missouri Gas Energy
CAG–24.
Omitted
CAG–25.
Docket No. CP92–479–002, New York State Electric & Gas Corporation
Docket No. CP93–36–001, North Penn Gas Company
CAG–26.
Docket Nos. RP93–151–000, 001, 002, 003, 005, RP94–39–000 and 001, Tennessee Gas Pipeline Company
Docket Nos. RP94–48–000, 001 and 002, Williston Basin Interstate Pipe Line Company
CAG–27.
Omitted
CAG–28.

Docket No. RP94–35–002, Colorado Interstate Gas Company

**Hydro Agenda**

H–1.
Reserved

**Electric Agenda**

E–1.
Docket No. EC93–6–001, Cincinnati Gas & Electric Company and PSI Energy, Inc. Order on rehearing.

**Oil and Gas Agenda**

*I. Pipeline Rate Matters*

PR–1.
Reserved

*II. Restructuring Matters*

RS–1.
Omitted

RS–2.
Docket Nos. RS92–19–003, 004, 007, 008, RP92–104–000 and RP92–131–000, K N Energy, Inc. Order on compliance and rehearing.

*III. Pipeline Certificate Matters*

PC–1.
Reserved

Dated: January 5, 1994.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94–595 Filed 1–6–94; 11:37 am]

BILLING CODE 6717–01–P

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**NATIONAL WOMEN'S BUSINESS COUNCIL**

**SUMMARY:** In accordance with the Women's Business Ownership Act, Public Law 100–533 as amended, the National Women's Business Council announces a forthcoming Council Meeting. The meeting will cover action items to be taken by the National Women's Business Council in Fiscal Year 1994 including but not limited to increasing procurement opportunities and access to capital for women business owners.

**DATE:** January 21, 1994, 11:00 a.m. to 12:00 p.m.

**ADDRESS:** Federal Reserve Martin Building.

**STATUS:** Open to the public.

**CONTACT:** For further information contact Maia Jourgensen, Deputy Director or Gilda Washington, Administrative Officer, National Women's Business Council, 409 Third Street, SW., suite 5850, Washington, DC 20024, (202) 205–3850.

**Maia Jourgensen,**

*Deputy Director, National Women's Business Council.*

[FR Doc. 94–545 Filed 1–5–94; 4:43 pm]

BILLING CODE 6820–AB–M

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**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 10, 1994.

An open meeting will be held on Wednesday, January 12, 1994, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, January 13, 1994, at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, January 12, 1994, at 10:00 a.m., will be:

Consideration will be given to whether to propose for public comment amendments to Form ADV and related rules under the Investment Advisers Act of 1940 that would require investment advisers sponsoring wrap fee programs to prepare a separate disclosure or "brochure" for wrap fee program clients, and specify the information required in the brochure. For further information, please contact Eric C. Freed at (202) 272–2107.

The subject matter of the closed meeting scheduled for Thursday, January 13, 1994, at 3:00 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Blair Thomas at (202) 272–2300.

Dated: January 6, 1994.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 94–614 Filed 1–6–94; 2:23 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

[Regulations No. 4 and 16]
RIN 0960-AB00

### Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System

*Correction*

In rule document 93-24238 beginning on page 52346 in the issue of Thursday, October 7, 1993 make the following corrections:

**PART A of Appendix 1 [Corrected]**

1. On page 52363, in the second column, under Table I, in the second column of the table, in the last line, "75 or more" should read "72 or more".

2. On the same page, in the same column, in the last paragraph, in the last line, "see 2.00E.);" should read "see 3.00E.);".

**PART B of Appendix 1 [Corrected]**

3. On page 52366, in the third column, under Table I, in the third column of the table, in the last entry, ".165" should read "1.65".

4. On the same page, in the same column, under Table II, in the third column of the table, in the first line of the heading, "FEV" should read "FVC".

5. On the same page, in the same column, under Table II, in the third column of the table, the last two entries, "175" should read "1.75" and "205" should read "2.05".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Training Partnership Act; Youth Fair Chance Demonstration Projects

*Correction*

In notice document 93-31200 beginning on page 67814 in the issue of Wednesday, December 22, 1993, make the following corrections:

1. On page 67814, in the second column, in DATES:, in the fourth line, "March 22, 1993," should read "March 22, 1994,".

2. On page 67817, in the third column, in the first full paragraph, in the eighth line, "$1200" should read "$100".

BILLING CODE 1505-01-D

federal register

Monday
January 10, 1994

Part II

# Department of Education

34 CFR Parts 462 and 472
National Workplace Literacy Program;
Final Regulations and Notice

## DEPARTMENT OF EDUCATION

[CFDA No. 84.198]

### National Workplace Literacy Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

The Secretary wishes to highlight, for potential applicants, that this program can help to further National Education Goal 5—ensuring that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program helps by improving approaches and methods used in meeting the literacy needs of adults in the workplace, including those with limited English proficiency.

Eligible Applicants: (a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application. Applications are governed by the EDGAR provisions in 34 CFR 75.127–75.129 regarding group applications.

Deadline For Transmittal of Applications: March 11, 1994.

Deadline for Intergovernmental Review: March 10, 1994.

Available Funds: $18,527,425 for the first 12 months. Funding for the second and third year is subject to availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

Estimated Range of Awards: $105,469–$1,205,234 (funding for first 12 months).

Estimated Average Size of Awards: $370,549 (funding for first 12 months).

Estimated Number of Awards: 50.

**Note:** The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months (3 twelve-month budget periods).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses); and (b) the regulations for this program in 34 CFR parts 460 and 472, including amendments to part 472 that are found elsewhere in this issue of the **Federal Register**.

Description of Program: The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills, services, and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

The statute authorizing this program requires that projects use Federal funds to supplement, and not supplant, funds otherwise available for the purposes of the program.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

In addition to the points awarded based on the selection criteria, the Secretary assigns five points to applications from partnerships that include as a partner one or more small businesses that have signed the partnership agreement. An applicant must provide on the Partnership Agreement form the Small Business Administration's (SBA) Standard Industrial Classification (SIC) code for the small business partner. See the Small Business Size Standards: Final and Interim Final Rules (13 Code of Federal Regulations (CFR) part 121). These rules may be found at many public libraries or by contacting a Small Business Administration local district office or regional office, or by calling the SBA's Office of Size Standards in Washington, DC at (202) 205–6618.

Reserved points: The program regulations in 34 CFR 472.21(b) provide that the Secretary may award up to 100 points for selection criteria, including a reserved 10 points. For this competition, the Secretary distributes the reserved 10 points as follows:

Program Factors (34 CFR 472.22(a)).

Five points are added to this criterion for a possible total of 20 points.

*Plan of Operation* (34 CFR 472.22(d)). Five points are added to this criterion for a possible total of 20 points.

*The criteria:* (a) *Program Factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment,

career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project;

(4) Demonstrates the active commitment of all partners to accomplishing project goals; and

(5) Focuses on improving performance in jobs or job functions that have a broad representation within the nation's workforce so that the products can be adapted for use by similar workplaces across the Nation.

(b) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Develop or use curriculum materials for adults based on literacy skills needed in the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning;

(4) Provide training through the partner classified under 34 CFR 472.2(a)(2), unless transferring this activity to the partner classified under 472.2(a)(1) is necessary and reasonable within the framework of the project; and

(5) Provide, and document for others, a program of training for staff including, but not limited to, techniques of curriculum development and special methods of teaching that are appropriate for workplace environments.

(d) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations;

(iv) A description of the respective roles of any sites; and

(v) A realistic time table for accomplishing project objectives;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(e) *Applicant's experience and quality of key personnel.* (8 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the plan for an independent evaluation of the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety, and attendance), and job retention;

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

Note: The Program Effectiveness Panel (PEP) is a mechanism the Department has developed for validating the effectiveness of educational programs developed by schools, universities, and other agencies. The PEP is composed of experts in the evaluation of educational programs and in other areas of education, at least two-thirds of whom are non-Federal employees who are appointed by the Secretary. Regulations governing the PEP are codified in 34 CFR parts 785–789. Specific criteria for PEP review are found in 34 CFR 786.12 or 787.12.

(g) *Budget and cost-effectiveness.* (7 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(h) *Demonstration.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan, during the grant period, to disseminate the results of the project, including—

(i) Demonstrating promising practices used by the project to others interested in implementing these techniques;

(ii) Conducting workshops or delivering papers at national conferences or professional meetings; and

(iii) Making available material that will help others implement promising practices developed in the project.

(i) *Commitment.* (5 points) The Secretary reviews each application to

determine the quality of the partnership's plan to increase, during the project, the capacity of partners to provide a coherent program of learning in the workplace that is based on promising practices demonstrated in the project. For example, the partners could—

(1) Integrate workplace literacy services into long-term planning of partner organizations;

(2) Create and implement policies and practices that encourage worker participation in the project;

(3) Provide training that will enable each partner to build a capacity to furnish necessary workplace literacy services in the future; or

(4) Include in the project design an opportunity to assess what workplace literacy services partners may provide in the future.

Additional Factor: In making awards under this program, the Secretary may consider, in addition to the selection criteria, whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to learn about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 24, 1993 (58 FR 50162–50164).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA 84.198, U.S. Department of Education, room 4181, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Washington, DC 20202–4725; or (2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: To apply for an award under this program competition, your application must be organized in the following order and include the following six parts:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and Instructions.

*Part II:* Partnership Agreement Form.

*Part III:* Budget Information and Instructions.

*Part IV:* Budget Narrative.

*Part V:* Application Narrative.

*Part VI:* Additional Assurances and Certification:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED form 80–0013) and Instructions.

c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and Instructions.

(**Note:** ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

An applicant may submit information on a photostatic copy of the forms in Appendix A. However, each of the pertinent documents must include an original ink signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State Agencies may choose to submit two copies with the original.

No grant may be awarded unless a complete application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Liz Miller or Jeanne Williams, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4513–MES, 400 Maryland Avenue SW., Washington, DC 20202–7327. Telephone (202) 205–9750.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on

the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

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. 1211(a).

Dated: January 3, 1994.

**Augusta S. Kappner,**

*Assistant Secretary Vocational and Adult Education.*

BILLING CODE 4000–01–M

Appendix A

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | |
|---|---|
| 2. DATE SUBMITTED | Applicant Identifier |
| 3. DATE RECEIVED BY STATE | State Application Identifier |
| 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address (give city, county, state, and zip code):

Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:
U.S.Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 8

TITLE: Workplace Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

| Start Date | Ending Date |
|---|---|
| | |

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 2-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

PARTNERSHIP AGREEMENT FORM

INSTRUCTIONS: Partners must submit a signed Partners' Agreement form and enclose it with the application. As indicated in 34 CFR 472.2 it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Please note that every partnership must include at least one entity from each of the following two categories and may, but need not, include more than one entity from each category. Category 1 includes a business, industry, or labor organization, or private industry council. Category 2 includes a State educational agency, local educational agency, or school (including an area vocational school, and employment and training agency, or a community-based organization). This means that the Partnership Agreement must be signed by at least one Category 1 partner and at least one Category 2 partner and must also be signed by any other partner(s) included in the partnership. Any questions about forming a valid partnership and properly completing the Partnership Agreement may be referred to one of the program officers listed as an information contact in this application notice.

If you are claiming the small business preference because one or more of the proposed partners has small business status, please indicate the partner's Standard Industrial Classification (SIC) code in the space provided. If this information is not included, the small business preference will not be applied to the application.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- designate partner _____ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100-297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

| Category One Partner | Category Two Partner |
|---|---|
| _____ | _____ |
| Original Ink Signature | Original Ink Signature |
| _____ | _____ |
| Name (Typed) | Name (Typed) |
| _____ | _____ |
| Title (Typed) | Title (Typed) |
| _____ | _____ |
| Organization (Typed) | Organization (Typed) |
| _____ | |
| SIC Code (only if small business) | |
| _____ | _____ |
| Date (Typed) | Date (Typed) |

Note: Applicant must add signature spaces including the above information for any additional partner(s).

BILLING CODE 4000-01-C

**Instructions for Part II—Partnership Agreement Form**

Partners must submit a signed Partnership Agreement Form and enclose it with the application. As indicated in 34 CFR 472.2, it is essential that the partners sign and submit this document in order for their application to be considered complete. If the agreement is retyped, the applicant should make sure that none of the wording is changed. Any changes in wording could alter the meaning of the agreement and thus render the application ineligible. Any reference in the application to an organization as a partner in the project is considered to mean a bona fide partner in the partnership who must sign the partnership agreement. If the document is not signed by all organizations identified as partners and submitted with the application or if the wording is changed and alters the meaning of the agreement, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Preference is given under this program to an application that includes one or more small businesses as a partner. For the purpose of this program, to claim a small business preference, the applicant must certify which of the partner enterprises is a small business under the Small Business Administration's Size Standards: Final and Interim Final Rules (13 CFR part 121) and furnish the Standard Industrial Classification (SIC) code in the Final and Interim Final Rules within which each such enterprise classifies itself. The SIC code for a small business partner must be entered in the space provided on the Partnership Agreement Form.

BILLING CODE 4000-01-M

PART III - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

| | A | B | C |
|---|---|---|---|
| 1. Personnel | | | |
| 2. Fringe Benefits (Rate %) | | | |
| 3. Travel | | | |
| 4. Equipment | | | |
| 5. Supplies | | | |
| 6. Contractual | | | |
| 7. Other | | | |
| 8. Total, Direct Cost (lines 1 through 7) | | | |
| 9. Indirect Cost (Rate %) | | | |
| 10. Training Costs/Stipends | | | |
| 11. TOTAL, Federal Funds Requested (lines 8 through 10) | | | |

SECTION B - Cost Sharing Summary (if appropriate)

| | A | B | B |
|---|---|---|---|
| 1. Cash Contribution | | | |
| 2. In-Kind Contribution (only costs specifically for this project) | | | |
| 3. TOTAL, Cost Sharing (Rate 30%) | | | |

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the entire project budget period.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

BILLING CODE 4000-01-C

**Instructions for Part III-Budget Information**

*Section A—Budget Summary by Categories*

1. *Personnel:* Show salaries to be paid to project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for three people to attend three developmental staff meetings in Washington, DC.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Show the total for lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs (see Note).

10. *Training/Stipend Cost:* (not allowable)

11. *TOTAL, Federal Funds Requested:* Show total for lines 8 through 10.

**Note:** The National Workplace Literacy Program includes a statutory requirement that Federal funds supplement, and not supplant, non-Federal funds. 34 CFR 75.563 requires programs of this type to use a restricted indirect cost rate. 34 CFR 75.564–75.568 provides the formula for determining the restricted indirect cost rate and provides definitions of terms used in the formula. A grantee other than a State or local

government may use the restricted indirect cost rate or eight percent, whichever is less. Copies of part 75 of 34 CFR may be obtained from the Government Printing Office by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. These regulations may also be found at many local libraries.

*Section B—Cost Sharing Summary*

Indicate the actual rate and amount of cost sharing. The National Workplace Literacy Program requires that the partnership provide at least 30 percent cost sharing. The share required refers to a percentage of Total project cost, not of Federal funds.

**Part IV—Instructions for Budget Narrative**

Prepare a detailed Budget Narrative for the first year of the project that justifies, and/or clarifies the budget figures shown in sections A and B. (Please note that the National Literacy Act of 1991 (Pub. L. 102-73) amended the section of the Adult Education Act that authorizes the National Workplace Literacy Program to permit any eligible organization to use 100 percent Federal funds for administrative costs incurred in establishing a project during a start-up period. 34 CFR 472.32(b) requires that an applicant minimize the start-up period, if any, proposed for its project and that the start-up period not exceed six months.) Explain:

1. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;

2. How the major cost items relate to the proposed project activities;

3. The costs of the project's evaluation component;

4. What matching occurs in each budget category; and

5. A breakdown of expenditures in the start-up period, and in the subsequent operational period.

Provide estimated budget totals for the second and third years of the project.

**Instructions for Part V—Application Narrative**

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project including a list of the members of the partnership;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 50 double-spaced, typed, 8½" x 11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting documentation, also on 8½" x 11" paper (e.g., letters of support, footnotes, resumes, etc.), or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—(1) Under § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources.

Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult Education Act, as amended.

**Instructions for Estimated Public Reporting Burden**

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830-0521, Washington, DC 20503.

(Information collection approved under OMB control number 1830-0521. Expiration date: December 31, 1995.)

BILLING CODE 4001-01-P

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988, (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq ); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

SF 424B (4-88) Back

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 —

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

## Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0346-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
   - ☐ a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Status of Federal Action:
   - ☐ a. bid/offer/application
   - b. initial award
   - c. post-award

3. Report Type:
   - ☐ a. initial filing
   - b. material change

   For Material Change Only:
   year _____ quarter ____
   date of last report _____

4. Name and Address of Reporting Entity:
   - ☐ Prime
   - ☐ Subawardee
     Tier ____, if known:

   Congressional District, if known:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

   Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

   CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:
   $

10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):

    b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):
    $ _____ ☐ actual ☐ planned

12. Form of Payment (check all that apply):
    - ☐ a. cash
    - ☐ b. in-kind; specify: nature _____
      value _____

13. Type of Payment (check all that apply):
    - ☐ a. retainer
    - ☐ b. one-time fee
    - ☐ c. commission
    - ☐ d. contingent fee
    - ☐ e. deferred
    - ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

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Standard Form - LLL

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

# DISCLOSURE OF LOBBYING ACTIVITIES
## CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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BILLING CODE 4000-01-C

**Appendix B**

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure that Block 10 of the face page of the application (Standard form 424) clearly indicates the CFDA number 84.198, and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than 50 pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

(3) Copies (samples) of any curricula that reflect the applicant's experience and the scope and direction of any current or previous projects related to this application.

Note that a Budget Narrative describing specific uses of funds requested in the budget form also is required. No applications will be funded without this material. The Budget Narrative is not included in the recommended 50 page limit.

Q. How should my application be organized?

A. The applicant should assemble its package in the following order: The SF 424 on top, followed by the abstract, Partnership Agreement Form, table of contents, Budget Information Form, Budget Narrative, Application Narrative, assurances and certifications, and appendices.

Do not substitute your own cover for the SF 424. Please include one extra, loose copy of the SF 424 for use by the Application Control Center. Please number all pages. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Can project funds be used to cover travel expenses?

A. Travel associated with carrying out the project can be funded using program funds if necessary and reasonable. The Secretary anticipates that the project director, one business or labor representative, and the evaluator will attend three developmental staff meetings over the course of the project (one start-up conference, one mid-point conference, and one close-out conference). Therefore, you may wish to include the costs of nine trips to Washington, D.C. in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in § 472.2 of the program regulations. A partnership requires a signed agreement between at least one entity described in § 472.2(a)(1) and at least one entity described in § 472.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations, a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city government is not an eligible partner. No agency of the Federal government is an eligible partner. Federal employees including members of the armed services are not eligible for training. If you are not sure whether a particular entity is an eligible partner, please call the program officers listed as information contacts in the application notice.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in § 472.5 of the regulations. Note that entities that are "helpers" or "sites" may not receive funds from the grant.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is required both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities in the project.

The Department interprets even a single reference in the application to an organization as a partner to mean that it is a bona fide partner in the partnership and, thus, is required to sign the partnership agreement. The applicant should be careful to designate partners, helpers, contractors, etc. in the same way wherever they are mentioned throughout the application. Because partnership requirements are established by law, the Department reviews each agreement form to be certain that it meets the terms of the law requiring all entities named as partners to sign the agreement. The Department

wishes to underscore that if any of the entities named as partners in the application have not signed the agreement form, the application will be returned to the applicant without further consideration for funding.

Q. How does the Department define "small business"?

A. In 34 CFR 472.5, the Department defines "small business" as a business entity that—

(1) Is organized for profit, with a place of business located in the United States and that makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor, or both; and

(2) May be in the legal form of an individual proprietorship, partnership, corporation, joint venture, association, trust or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture; and

(3) Meets the requirements found in 13 CFR part 121 concerning Standard Industrial Classification codes and size standards.

If you are not sure whether or not you meet the definition of a small business, you may want to contact your local district office or regional office of the Small Business Administration (SBA) for advice. If you are unable to locate those offices you may call the SBA's Office of Size Standards at (202) 205–6618.

Q. May an application including a business partner that is a small local affiliate of a larger corporation receive the small business priority points?

A. The overall size of the business partner and its affiliates will determine the answer. Size determinations must include the business partner and all its domestic and foreign affiliates regardless of whether the affiliates are organized for profit. 13 CFR 121.401 describes affiliating circumstances for size determination purposes and establishes exceptions thereto.

Q. May an application including a business partner that operates as the small local franchisee or licensee of a larger corporation receive the small business priority points?

A. Small business priority points may be awarded when a business partner meets the following three conditions: It (1) is a local franchisee or licensee within the size determination standards, (2) has the right to profit from its efforts and (3) bears the risk of loss commensurate with ownership. Exceptions to this general interpretation may arise where affiliation results from other means than the franchise or license agreement such as common ownership, common management or excessive restrictions on the sale of the franchise interest. See § 121.401(m) of 13 CFR.

Q. Must a small business participant be a partner for the application to qualify for the small business priority points?

A. Yes. The small business participant must be a partner who has signed the Partnership Agreement for the application to qualify for the extra points.

Q. Must an applicant provide the Standard Industrial Classification (SIC) code for the small business partner in order to receive the small business priority points?

A. Yes. The SIC code must be entered on the line provided on the Partnership Agreement form.

Q. What is meant by a required percent of non-Federal cost-sharing or matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs of $100,000 would have to contribute $30,000 to match a Federal award of $70,000 ($30,000 = 30 percent of $100,000 ($30,000 plus $70,000)). All partnerships must contribute at least 30 percent of total program costs, except that partnerships may receive full reimbursement for their necessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period should be minimized and may not exceed six months, at which time the project is expected to provide services to adult workers.

Q. What costs may be included in the 30 percent match (cash or in-kind)?

A. Any cost that can be paid with Federal funds from this program is allowable as match (see Education Department General Administrative Regulations, 34 CFR 74.50–74.57 and 34 CFR 80.24).

Q. What costs are not allowed using project funds (Federal or non-Federal match)?

A. The following items are not allowable costs in the National Workplace Literacy Program:

- Life skills such as balancing a checkbook, learning to read to children, writing personal correspondence, etc.
- Personal counseling such as counseling for alcoholism, mental health, health, domestic problems, or housing issues.
- Job skills or vocational training such as direct training in statistical process control (SPC) rather than literacy skills needed for SPC.
- Computer literacy, defined as any training above the level of computer competence needed to operate a computer-assisted program of instruction used in a workplace literacy project. Non-allowable costs include teaching of word processing, WordPerfect, Lotus, dBase, etc.
- Stipends or tuition payments.
- Training of supervisors, other than those one step up from targeted workers such as maintenance crew supervisors.
- Construction costs.
- Institutional allowance.
- Any unreasonable or unnecessary cost.

Q. May a project provide vocational or job training activities?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace. Workplace literacy activities include only the adult education activities listed in the Description of Program section of the Notice Inviting Applications. This list does not include vocational or job training activities such as auto mechanics, dye casting, tailoring, and statistical process control. Workplace literacy instruction, however, may enable individuals to benefit subsequently or simultaneously from advanced vocational skills training provided from other funds. If you are not sure whether a particular activity is eligible under this program, please call one of the program officers listed as information contacts in the application notice.

Q. May a project provide training in operating a computer?

A. Training to operate a computer that is part of the performance of a job is a form of vocational or job training and is not an eligible activity under this program. However, computers could be used as a means of instruction if this were necessary and reasonable under the circumstances of a particular project. In such a context, it would be permissible to ensure that students possessed those rudimentary skills that are necessary to interact with computer-assisted literacy instruction.

Q. What should be disseminated?

A. The criterion "Demonstration" encourages applicants to use certain dissemination strategies but does not preclude the use of additional strategies that are appropriate for a particular project. Projects should distribute materials that will help others to adopt promising practices arising from the

project, such as assessment instruments, recruitment materials, job task analysis materials, staff development materials, curricula, etc. The Department does not expect or anticipate that partnerships will disseminate trade secrets or other protected information. However, a project's dissemination activities should clearly benefit businesses and workplaces outside of the partnership.

Q. What is the Department of Education's Program Effectiveness Panel?

A. As mentioned in the note to the criterion "Evaluation plan," the Program Effectiveness Panel (PEP) is a mechanism that the Department has developed for validating the effectiveness of educational programs developed by schools, universities, and other agencies.

Specific criteria for PEP review are found at 34 CFR 786.12 or 787.12. For further information about PEP, prospective applicants may wish to read Making the Case: Evidence of Effectiveness in Schools and Classrooms, which contains criteria and guidelines for submitting project results to PEP. This publication is available from the U.S. Department of Education's Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Washington, DC 20208–5645. Telephone: (202) 219–2134.

Q. How many copies of the application should I submit and must they be bound?

A. The original application should be bound and clearly marked as the original application bearing the original signatures. In addition six copies should be submitted and marked as copies. Local or State Agencies may choose to submit two copies with the original. Applications should not include foldouts, photographs, audio-visuals, or other materials that are hard to duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 8 to 9 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return applications. Therefore, applicants should retain at least one copy of the application.

Q. What happens during negotiations between high ranking applicants and the U.S. Department of Education grants office?

A. During negotiations, technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can often be found at your local library. If not, they can be obtained from the Government Printing Office by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials related to this notice should be referred to as follows:

(1) The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100–297, title III, sections 301–385.

(2) The National Literacy Act of 1991, title II, Public Law 102–73, section 202.

(3) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86).

(4) 34 CFR parts 460 and 472 (National Workplace Literacy Program).

**Note:** Amendments to 34 CFR 472 are published in this issue of the **Federal Register**.

(5) Small Business Size Regulations (13 CFR part 121).

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**DEPARTMENT OF EDUCATION**

**34 CFR Parts 462 and 472**

**RIN 1830–AA11**

## State-Administered Workplace Literacy Program; National Workplace Literacy Program

**AGENCY:** Department of Education.
**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends existing regulations that govern the State-Administered Workplace Literacy Program and the National Workplace Literacy Program. These amendments are needed to increase project accountability and to make technical changes. The regulations provide rules for applying for and expending Federal funds under these programs.

**EFFECTIVE DATE:** These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact persons. A document announcing the effective date will be published in the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah E. Newcomb, Department of Education, 400 Maryland Avenue SW., room 4417, Mary E. Switzer Building, Washington, DC 20202–7320. Telephone: (202) 205–9872. Or Ms. Jeanne Williams, Department of Education, 400 Maryland Avenue, SW., room 4518, Mary E. Switzer Building, Washington, DC 20202–7327. Telephone: (202) 205–5977. 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.

**SUPPLEMENTARY INFORMATION:**

### Background

The State-Administered Workplace Literacy Program and the National Workplace Literacy Program are important activities that assist in achieving the National Education Goals. Specifically, the workplace literacy programs address Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. Moreover, the National Workplace Literacy Program supports this goal by providing grants to exemplary partnerships between a business, industry, or labor organization, or a private industry council, and an education organization to support work-related literacy education.

These regulations increase the accountability of workplace literacy projects. The Department is implementing this strategy in order to expand the demonstration and dissemination activities of projects, thereby increasing the number of instructional approaches, materials, and techniques for providing work-related literacy education that are submitted to and approved by the Department's Program Effectiveness Panel, and subsequently made available to practitioners.

On May 27, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (58 FR 30916).

### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 33 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority and comments on subjects outside the scope of these regulations—are not addressed.

## PART 462—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

*Partnership Agreement (§§ 462.30(c) and 462.32(b))*

*Comments:* Some commenters were concerned that requiring partners to enter into a binding agreement would have a dampening effect on businesses joining partnerships, and recommended a less restrictive approach. Another commenter supported requiring a binding agreement.

*Discussion:* For five years the Secretary has required, under the National Workplace Literacy Program, the types of binding agreements that would become part of the State-Administered program. The Secretary's experience is that these agreements are essential to eliciting quality applications, promoting project success, and ensuring accountable grant performance.

*Changes*: None.

## PART 472—NATIONAL WORKPLACE LITERACY PROGRAM

*Definitions—Employment and Training Agency (§ 472.5)*

*Comments:* One commenter mistakenly thought the proposed change, which would clarify that employment and training agencies are nonprofit agencies, would exclude from participation as partners profit-making organizations that provide employment and training services. Other commenters agreed with the proposed change to the definition of "employment and training agency."

*Discussion:* The proposed change would codify an existing program practice that requires an education partner classified as an employment and training agency to be a nonprofit entity. However, profit-makers can continue to participate as partners under the classification "business" or "industry" organization. See § 472.2(a)(1). Profit-making organizations should note that a selection criterion in § 472.22(c)(4) requests applications to indicate the extent to which training will be provided through the education partner classified under § 472.2(a)(2), rather than through the business or labor partner classified under § 472.2(a)(1), unless transferring this activity to the business or labor partner is necessary and reasonable within the framework of the applicant's proposed project.

*Changes*: None.

*Project Director (§§ 472.5 and 472.32(e))*

*Comments:* Several commenters supported the regulations defining the term "project director" and requiring that each project provide for a director. Some of these commenters recommended additional regulations, including requiring a full-time project director, specifying the qualifications of a project director, and requiring that proposed personnel demonstrate substantive experience, education, and training in the workplace.

*Discussion:* Because the project director will be responsible for the day-to-day operation of the project, the qualifications of that person should be directly related to the specific requirements of the project, and will naturally differ somewhat from project to project. The Secretary strongly encourages applicants to hire project directors with experience and training in project management and in fields related to objectives of the project, but believes that a list of standardized qualifications would limit the discretion of applicant partnerships to hire directors who respond to the needs of the project. The regulations do not

specifically require a full-time project director, and this may not be needed—especially in small projects. However, each project must provide for a director who will devote sufficient time to exercising day-to-day operational responsibility and ensure that the project is well managed.

*Changes:* None.

*Preapplications (§§ 472.10 and 472.11)*

*Comment:* One commenter suggested retaining §§ 472.10 and 472.11, which describe a preapplication process, because the process would save time for projects that might not be appropriate for a national competition. Another commenter supported the Department's proposal to delete these sections because a preapplication would be a burdensome paperwork requirement.

*Discussion:* Historically, these sections were included in the regulations to authorize use of a preapplication process where it would be helpful to applicants. However, the provision has never been needed, and the Department does not foresee its use in the future.

*Changes:* None.

*Preference for Small Business Partners (§ 472.21(e))*

*Comments:* One commenter agreed that preference points should be given for applications involving a small business, but thought that the points should be given even if the business is not involved as a project partner. The commenter stated that it is unrealistic to expect small businesses to become partners because this would burden them with paperwork, meetings, and unnecessary reports. Another commenter suggested giving an additional preference to partnerships involving small businesses with less than 100 or 250 employees.

*Discussion:* A small business can potentially be involved in a workplace literacy project as a "partner," a "contractor," a "helping organization," or a "site." Each of these terms is defined in 34 CFR 472.5, which clarifies that only a partner can receive program funds and be fully involved in project policy and operations. The Secretary believes that preference should be given only to those partnerships that include small businesses as partners. To interpret the preference more broadly would benefit applications that involve large businesses as partners—and merely involve small businesses in a less significant role. Each partnership agreement designates one of the partners to serve as the project grantee. This partner is principally responsible for project administration, including paperwork and reports. Any small business partner that does not wish to serve as a grantee can enter into an agreement designating another partner as the grantee, and can thus avoid the paperwork burden. The Secretary has adopted a definition of the term "small business" modeled on regulations of the Small Business Administration and does not believe it would be beneficial to modify that definition by giving an additional preference to small businesses having particularly small numbers of employees.

*Changes:* None.

*Selection Criteria—Program Factors (§ 472.22(a)(5))*

*Comment:* Section 472.22(a)(5) proposed adding language to a selection criterion encouraging applicants to focus "on improving performance in jobs or job functions that have a broad representation within the Nation's workforce so that the products can be adapted for use by similar workplaces across the Nation." Several commenters interpreted this language as a statement of the scope of services that are allowable under the National Workplace Literacy Program, believed that this scope had been defined too narrowly, and urged that it be expanded to include a variety of activities. It was also suggested that a project be permitted to provide any services identified in a needs assessment. One commenter asked whether use of the term "jobs or job functions" was intended to shift focus away from job-specific competencies of current job titles to broader competencies that are identified in the report issued by the Department of Labor Secretary's Commission on Achieving Necessary Skills (SCANS). The commenter asked that the Department clarify or define which jobs or job functions have "broad representation within the Nation's workforce." Other commenters stated that a broader scope of services is needed to meet the National Education Goals.

*Discussion:* Section 472.22(a)(5) is a selection criterion used to evaluate applications and is not a statement of the scope of allowable program services. That scope is stated in § 472.3, which reflects sections 371(a)(1) and (3) of the Adult Education Act, and lists allowable activities. Many activities mentioned by the commenters, such as speaking, listening, reasoning, problem-solving, team building, GED preparation, and meeting the literacy needs of adults with limited English proficiency, are allowable under § 472.3. Further guidance on the scope of allowable activities is included in the notice inviting applications published elsewhere in this issue of the Federal Register. Generally, workplace literacy projects teach literacy skills needed in the workplace that improve the productivity of the workforce. The program is not a program of general adult education and cannot serve needs that are not directly related to the workplace. At the same time, projects serving needs that are directly related to the workplace are encouraged to use creative approaches to stimulate workers' interests and to develop individualized education plans that reflect workers' goals. See § 472.22(c)(2).

The purpose of the language encouraging a focus on nationally representative jobs or job functions is to enhance the capability of a project to demonstrate results that can be adapted by similar employers and industries. Section 472.22(a)(5) was not proposed specifically to respond to the recommendations of the SCANS report, nor was the report intended to modify the scope of services under the workplace literacy program. The Secretary believes that it is unnecessary to define by regulation what jobs or job functions are broadly representative. Applicants are encouraged to make their own evaluation of current and future labor market conditions, and design a project that can help similar workplaces in the future. This should assist in meeting National Education Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

*Changes:* None.

*Selection Criteria—Demonstration (§ 472.22(h)) (Proposed § 472.22(h)(1))*

*Comments:* Several commenters agreed that the Department should emphasize dissemination activities, and recommended the inclusion of various other dissemination strategies. Two commenters were concerned that dissemination activities could be hampered because the instructional materials produced by a project might contain protected information.

One commenter suggested that, because carrying out both the demonstration and commitment activities described in proposed § 472.22(h)(1) and (2) would be overwhelming, applicants should be asked to address only one of these criteria.

*Discussion:* The dissemination strategies listed in proposed § 472.22(h)(1) are among the regulatory changes designed to transform the National Workplace Literacy Program

into a true demonstration program. See the previous discussion of the background of these regulations and note also § 472.31(c), which requires that a project be independently evaluated for "spread" and "transportability" to other sites. Proposed § 472.22(h)(1) encouraged applicants to use certain dissemination strategies but was not intended to preclude the use of additional strategies when they are appropriate for a particular project.

The Secretary does not expect or anticipate that partnerships will disseminate trade secrets or other protected information. However, a project's dissemination activities should clearly benefit businesses and workplaces outside of the partnership.

While, ideally, all partners will be involved in demonstration and commitment activities, these activities may be accomplished through the efforts of particular partners. The Secretary desires that the factors listed in the criteria on "Demonstration" and "Commitment" be reflected in an applicant's program design, management plan, and budget. However, the Secretary does not anticipate that addressing both criteria will be burdensome if partners adequately plan and budget for them.

*Changes:* The selection criterion "Demonstration and commitment" in proposed § 472.22(h) has been separated into a criterion on "Demonstration" in § 472.22(h) and a criterion on "Commitment" in § 472.22(i). Also see the discussion on § 472.22(i).

*Selection Criteria—Commitment (§ 472.22(i)) (Proposed § 472.22(h)(2))*

*Comments:* Several commenters opposed the criterion that encouraged applicants to state how partners plan to establish a program of workplace literacy services that can continue after Federal funding ends. Many of these commenters believed this criterion would adversely affect small businesses since they might not have the resources needed to continue a workplace literacy project. Other commenters pointed out that some businesses, especially small businesses, have short-term training needs that can be met during the course of the project and, therefore, would not need to continue the project. Still other commenters thought that because small businesses would not be able to continue a project, this criterion would nullify the five-point preference given for partnerships that include a small business.

Some commenters supported the inclusion of the criterion on commitment and indicated past success with this concept, but suggested that small businesses be exempted. Other commenters believed that expecting business partners to make a commitment to continue a project that is unproven is unreasonable and could scare away potential business partners. These commenters thought that commitment is best sought and obtained during a successful project.

Some commenters suggested such alternative methods of demonstrating commitment as release time for assessment and training, strategic planning for capacity-building, training business partners to provide workplace literacy, active participation of all partners, or gradual assumption of costs.

*Discussion:* The Secretary acknowledges the many helpful comments on this topic. Although proposed § 472.22(h)(2) did not involve a commitment to any unforeseeable or unnecessary post-project activities, the Secretary wishes to avoid any implication that this is the case. The Secretary also desires to preserve the competitive preference for partnerships involving small businesses. Accordingly, the selection criterion "Demonstration and commitment" in proposed § 472.22(h) has been separated into a criterion on "Demonstration" in § 472.22(h) and a criterion on "Commitment" in § 472.22(i). Moreover, § 472.22(i) makes it clear that plans for continuing workplace literacy after Federal funding ends should be based on realistic forecasts of the literacy needs of partners and should take into consideration a partner's capacity to continue services. To emphasize this point, the criterion now provides a range of examples of practical strategies for institutionalizing workplace literacy, many of which can be carried out by small businesses. The criterion also recognizes the importance of an applicant's commitment to institutionalizing learning in the workplace specifically during the project itself. These changes are intended to accommodate the legitimate concerns of the commenters while preserving the overall purpose of a selection criterion on commitment. The recently published study Adult Literacy in America points out that some 90 million adults demonstrate low levels of literacy and depicts a society in which the vast majority of Americans do not have the skills needed to earn a living in our increasingly technological society and international marketplace. The Secretary believes that a commitment to institutionalize learning will naturally lead to continuing efforts to promote workplace literacy after Federal funding ends and will assist in transforming American workplaces to meet the challenges of a world market.

*Changes:* The selection criterion "Demonstration and commitment" in proposed § 472.22(h) has been separated into a criterion on "Demonstration" in § 472.22(h) and a criterion on "Commitment" in § 472.22(i). The criterion on "Commitment" clarifies that applicants are to develop practical strategies for institutionalizing workplace literacy that are based on realistic forecasts of literacy needs and the capacity of partners. The criterion also encourages applicants to demonstrate a commitment to institutionalizing learning in the workplace during the project.

*Reporting (§ 472.30(b))*

*Comments:* Numerous commenters expressed the view that a two-page semi-annual performance and financial report would not be overly burdensome. These commenters felt that the data would be a good planning tool, would help projects monitor their progress, and would contribute to the standardization of the workplace literacy program nationwide. Other commenters suggested that the reports be made available at the time of award so that data bases could be designed to facilitate collection. Some commenters strongly advocated quarterly reports that include, in addition to the information the Secretary proposed collecting, a brief update on the success of the project in achieving its objectives. Two commenters recommended annual reporting, one because of the project's cycle for collecting evaluative data and the other because of the possibility that the Department might not have adequate staff resources to use the performance and financial data as intended.

*Discussion:* The Secretary considered requiring quarterly reports for the National Workplace Literacy Program, but determined that they would be burdensome for grantees. However, the Secretary believes that annual reports would not provide sufficient information to ensure program accountability and ready access to information that is comparable across projects. Grantees will be required to submit brief continuation applications annually in order to receive funding for the second and third year of their projects.

The Secretary believes that the continuation application and a two-page semi-annual report on progress and total spending for the reporting period will be adequate. The reports will be made available to grantees at the start of their projects to enable them to set up appropriate recordkeeping procedures,

and the Department will work with grantees to ensure that reports are used appropriately both to monitor and to improve projects.

*Changes:* None.

*Evaluation (§ 472.31)*

*Comments:* Several commenters thought that the requirement for projects to have a third-party evaluator would be expensive, burdensome, or too costly. Several other commenters supported the evaluation requirement because a rigorous evaluation design is essential to demonstrating impact and replicable results and would strengthen projects. One commenter was concerned that tying student learning gains to higher job productivity and performance would not result in reliable or valid measures of the effectiveness of projects because learning gains are not the only conditions affecting these factors.

*Discussion:* Program experience over the life of the National Workplace Literacy Program indicates that a third-party evaluation enhances the quality of a project without being expensive, burdensome, or too costly. The Secretary agrees with the comment that multiple conditions, including learning gains, may contribute to measured improvements in job productivity and performance. This comment supports the need for a rigorous evaluation design that includes, insofar as possible, controls for other variables that may also contribute to the improvements measured. Evaluations of this rigor require highly trained research and evaluation personnel who cannot always be found among staff persons employed within funded projects.

*Changes:* None.

*Start-up Period (§ 472.32(b))*

*Comments:* Numerous commenters supported lengthening the grant period to three years and extending the start-up period. However, one commenter questioned the necessity of a six-month start-up period.

*Discussion:* The heightened emphasis on demonstration and dissemination activities requires lengthening the grant period to three years, and, as necessary, lengthening the time needed to establish a project before services are provided to adult workers. Although § 472.32(b)(1) permits applicants to take up to a six-month start-up period, § 472.32(b)(2) requires applicants to "minimize the start-up period, if any, proposed for their projects."

*Changes:* None.

*Continuation of a Project After a Partner Withdraws (§ 472.34)*

*Comments:* One commenter suggested that the regulations specifically apply to business partners. Another commenter thought the regulations favored projects with more than two partners, and requested greater flexibility in the renegotiation of the scope of work of a grant. A commenter suggested that a project be allowed to continue despite the withdrawal of a partner, even if the conditions of § 472.34 are not satisfied. One commenter inquired whether all, or only one, of the conditions outlined in § 472.34 must be met by withdrawing partners.

*Discussion:* Although each partnership is required to designate one partner as its applicant and grantee, an award is made on the basis of the partnership agreement that is signed by all members of the partnership and that binds the partners to every statement and assurance made in the application, in addition to carrying out their respective roles. It is therefore reasonable to expect that the approved scope of work will continue to be carried out if a partner withdraws, regardless of the type of partner withdrawing or the number of partners in the original partnership. The regulations do not favor projects with more than two partners. Section 472.34(b)(1) allows for the full substitution of a partner even in the case of a two-party partnership so long as the partnership continues to meet the requirement in § 472.2(b) that there be at least one education partner and one business or labor partner. The Secretary wishes to point out that the conditions in § 472.34 are to be met by the remaining partners. They are not conditions to be met by the withdrawing partners as suggested by the commenter. Moreover, all of the conditions described in § 472.34 must be met before the Secretary will allow a project to continue.

*Changes:* Section 472.34 has been changed to clarify that all of the conditions described in this section must be met if a project is to be allowed to continue after the withdrawal of a partner.

*Union and Worker Involvement (Part 472)*

*Comments:* Several commenters thought unions should be involved in the development and implementation of projects. Some of these commenters recommended requiring a written statement indicating consultation with and concurrence by the union. Others suggested requiring a statement from the union that it either agrees to full partnership with the education partner and business partner or it acknowledges the collaboration between the education and business partner. One commenter suggested that points be awarded to proposals with employer and union partnerships.

One commenter suggested that, in the absence of a union, workers should be involved in planning the project. Another commenter suggested that points be awarded to applications—(1) with effective plans to involve workers in the educational provider's decision-making process; and (2) that emphasize participatory teaching methods.

Several commenters thought that union and worker involvement would improve the recruitment, interest, and commitment of the workforce, and help to allay fears that a project would result in the loss of jobs for employees failing to demonstrate learning gains.

*Discussion:* Section 371(a)(1) of the Act permits, but does not require, a labor organization to be a partner in an application under this program. This provision is reflected in § 472.2(a) and (b). As indicated in § 472.2(c), a labor organization, like any partner, must participate in a joint application for funding and sign a partnership agreement. However, the Secretary does not believe that a written statement regarding union consultation should be required of partnerships that do not include a labor organization. Nevertheless, the Secretary encourages all partnerships to involve workers and, as appropriate, labor organizations in matters related to the project. This arrangement should provide a number of benefits, including allaying any concerns that workers may have about participating in a project.

*Changes:* None.

*Intergovernmental Review*

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

*Assessment of Educational Impact*

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 462*

Adult education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Workplace literacy.

*34 CFR Part 472*

Adult education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Workplace literacy.

Dated: January 3, 1994.

**Richard W. Riley,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.198 National Workplace Literacy Program. Catalog of Federal Domestic Assistance Number has not been assigned for the State-Administered Workplace Literacy Program.)

The Secretary amends Parts 462 and 472 of Title 34 of the Code of Federal Regulations as follows:

## PART 462—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

1. The authority citation for part 462 continues to read as follows:

**Authority:** 20 U.S.C. 1211a(b), unless otherwise noted.

2. Section 462.30 is amended by adding a new paragraph (c) to read as follows:

**§ 462.30 Who is eligible to apply to a State for an award?**

* * * * *

(c) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the subgrantee or contractor. The agreement must also detail the role each partner plans to perform and bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under control number 1830–0521)

3. Section 462.32 is revised to read as follows:

**§ 462.32 What are the local application requirements?**

A local partnership application, submitted to an SEA for funding under the State-administered Workplace Literacy Program, must contain—

(a) The information in section 371(a)(4) of the Act; and

(b) A signed partnership agreement as described in § 462.30(c).

(Approved by the Office of Management and Budget under OMB control number 1830–0521)

(Authority: 20 U.S.C. 1211(b)(5))

## PART 472—NATIONAL WORKPLACE LITERACY PROGRAM

4. The authority citation for Part 472 continues to read as follows:

**Authority:** 20 U.S.C. 1211(a), unless otherwise noted.

### Subpart B—[Removed and Revised]

5. Part 472 is amended by removing and reserving subpart B.

6. Section 472.5 is amended by revising paragraph (a) and the definition of "Employment and training agency" in paragraph (b) and by adding new definitions of "Project director" and "Small business" to paragraph (b) in alphabetical order to read as follows:

**§ 472.5 What definitions apply?**

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) * * *

*Employment and training agency* includes any nonprofit agency that provides—as a substantial portion of its activity—employment and training services, either directly or through contract.

* * * * *

*Project director* means the person with day-to-day operational responsibility for the project.

* * * * *

*Small business* means a business entity that—

(1) Is organized for profit, with a place of business located in the United States and that makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor, or both; and

(2) May be in the legal form of an individual proprietorship, partnership, corporation, joint venture, association, trust or a cooperative, except that if the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture; and

(3) Meets the requirements found in 13 CFR part 121 concerning Standard Industrial Classification codes and size standards.

**§ 472.20 [Amended]**

7. Section 472.20 is amended by removing paragraph (c).

8. Section 472.21 is amended by revising paragraph (b) and adding a new paragraph (e) to read as follows:

**§ 472.21 How does the Secretary evaluate an application?**

* * * * *

(b) The Secretary may award up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 472.22.

* * * * *

(e) In addition to the points to be awarded based on the criteria in § 472.22, the Secretary awards five points to applications from partnerships that include as a partner a small business that has signed the partnership agreement.

9. Section 472.22 is amended by removing the word "and" after the semicolon at the end of paragraph (a)(3); removing the period at the end of paragraph (a)(4), and adding, in its place, "; and"; adding a new paragraph (a)(5); revising paragraph (b), introductory text; revising paragraph (c)(1); removing the word "and" after the semicolon at the end of paragraph (c)(3); removing the period at the end of paragraph (c)(4), and adding, in its place, "; and"; adding a new paragraph (c)(5); revising paragraph (d), introductory text; removing the word "and" after the semicolon at the end of paragraph (d)(2)(iii); adding the word "and" after the semicolon at the end of paragraph (d)(2)(iv); adding a new paragraph (d)(2)(v); revising paragraph (e), introductory text; revising paragraph (e)(2)(i); revising paragraph (f), introductory text; removing the word "and" after the semicolon at the end of paragraph (f)(4); removing the period at the end of paragraph (f)(5), and adding, in its place, "; and"; adding a new paragraph (f)(6) and a "Note to § 472.22(f)(6)" following the paragraph; revising paragraph (g), introductory text; and adding a new paragraph (h) to read as follows:

**§ 472.22 What selection criteria does the Secretary use?**

(a) * * *

(5) Focuses on improving performance in jobs or job functions that have a broad representation within the Nation's workforce so that the products can be adapted for use by similar workplaces across the Nation.

(b) *Extent of need for the project.* (10 points) * * *

* * * * *

(c) * * *

(1) Develop or use curriculum materials for adults based on literacy skills needed in the workplace;

* * * * *

(5) Provide, and document for others, a program of training for staff including, but not limited to, techniques of curriculum development and special methods of teaching that are appropriate for workplace environments.

(d) *Plan of operation.* (15 points) * * *

* * * * *

(2) * * *

(v) A realistic time table for accomplishing project objectives;

* * * * *

(e) *Applicant's experience and quality of key personnel.* (8 points) * * *

* * * * *

(2) * * *

(i) The qualifications, in relation to project requirements, of the project director;

* * * * *

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the plan for an independent evaluation of the project, including the extent to which the applicant's methods of evaluation—

* * * * *

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

Note to § 472.22(f)(6): The Program Effectiveness Panel (PEP) is a mechanism the Department has developed for validating the effectiveness of educational programs developed by schools, universities, and other agencies. The PEP is composed of experts in the evaluation of educational programs and in other areas of education, at least two-thirds of whom are non-Federal employees who are appointed by the Secretary. Regulations governing the PEP are codified in 34 CFR parts 785–789. Specific criteria for PEP review are found in 34 CFR 786.12 or 787.12.

(g) *Budget and cost-effectiveness.* (7 points) * * *

* * * * *

(h) *Demonstration.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan, during the grant period, to disseminate the results of the project, including—

(1) Demonstrating promising practices used by the project to others interested in implementing these techniques;

(2) Conducting workshops or delivering papers at national conferences or professional meetings; and

(3) Making available material that will help others implement promising practices developed in the project.

(i) *Commitment.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan to institutionalize learning in the workplace based on promising practices demonstrated in the project. In making this determination, the Secretary considers—

(1) The general, but realistic, forecast of literacy needs of members of the partnership and the capacity of the partners;

(2) Activities that will increase, during the grant period, the capacity of partners to provide a coherent program of learning in the workplace; and

(3) Activities that will lead to the continued provision or expansion of work-based literacy services built on successful outcomes of the project. For example, the partners could—

(A) Integrate workplace literacy services into the long-term planning of partner organizations;

(B) Create and implement policies and practices that encourage worker participation in workplace literacy and other education and training opportunities;

(C) Provide training that will enable partners to build a capacity to furnish necessary workplace literacy services in the future;

(D) Establish relationships within the partnership or with other entities that will continue provision of necessary workplace literacy services after the project ends; or

(E) Plan, after the project has ended, to expand services to other locations, divisions, or suppliers of the business or industry partners or labor organizations.

(Approved by the Office of Management and Budget under OMB control number 1830–0521)

10. Sections 472.30 and 472.31 are redesignated as §§ 472.32 and 472.33, respectively.

11. A new § 472.30 is added to read as follows:

**§ 472.30 What are the reporting requirements?**

(a) A recipient of a grant or cooperative agreement under this program shall submit to the Secretary performance and financial reports.

(b) These reports must be submitted at times required by the Secretary and at least semi-annually.

(c) These reports must contain information required by the Secretary.

(Authority: 20 U.S.C. 1211(a))

12. A new § 472.31 and "NOTE to § 472.31" are added to read as follows:

**§ 472.31 What are the evaluation requirements?**

(a) Each recipient of a grant or cooperative agreement under this program shall provide and budget for an independent evaluation of project activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student learning gains and the effects on job advancement, job performance (including, for example, such elements as productivity, safety, and attendance), and project and product spread and transportability.

(d) A proposed project evaluation design for the entire project period, expanding on the plans outlined in the application pursuant to § 472.22(f), must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as described in 34 CFR parts 785–789, must be submitted to the Secretary during the last year of the project period.

(f) If a grantee cooperates in a Federal evaluation of its project, the Secretary may determine that the grantee fully or partially meets the evaluation requirements of this section and the reporting requirements in § 472.30.

(Approved by Office of Management and Budget under OMB control number 1830–0522)

(Authority: 20 U.S.C. 1211(a))

Note to § 472.31: As used in § 472.31(c)—

"*Spread*" means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated; and

"*Transportability*" means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-

step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

13. Section 472.32, as redesignated, is amended by revising paragraphs (b), (d)(1), and (e) to read as follows:

**§ 472.32 What other requirements must be met under this program?**

* * * * *

(b)(1) The project period may include a start-up period, not to exceed six months, during which the project is being established and prior to the time services are provided to adult workers.

(2) Applicants shall minimize the start-up period, if any, proposed for their projects.

* * * * *

(d) * * *

(1) 100 percent of the administrative costs incurred in establishing a project during the start-up period described in paragraph (b) of this section by an SEA, LEA, or other entity described in § 472.2(a), that receives a grant under this part; and

* * * * *

(e) Each recipient of an award under this program shall provide for a project director.

14. A new § 472.34 is added to read as follows:

**§ 472.34 Under what circumstances may a project continue if a partner withdraws?**

(a) A project may continue despite the withdrawal of a partner that is unable to perform its role as outlined in the grant award document if all of the following conditions are met:

(1) Written approval is given by the Secretary.

(2) The partnership continues to meet the requirements in § 472.2(b).

(3) The partnership will be able to complete the remainder of the project.

(4) The partner's withdrawal will not cause a change in the scope or objectives of the grant or cooperative agreement.

(b) In determining that the condition in paragraph (a)(4) of this section is satisfied, the Secretary considers such factors as whether—

(1) A similar new partner will sign the partnership agreement and agree to carry out the role of the withdrawing partner as described in the grant agreement;

(2) One or more of the remaining partners will agree to carry out the role of the withdrawing partner as described in the grant agreement; or

(3) One or more of the remaining partners will expand its activities as approved under the grant in order to compensate for the activities that would have been carried out under the grant agreement by the partner that is withdrawing without a change in the project's scope or objectives.

(Authority: 20 U.S.C. 1211(a))

[FR Doc. 94–442 Filed 1–7–94; 8:45 am]

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## LIST OF PUBLIC LAWS

**Note:** The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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| 3 (1992 Compilation and Parts 100 and 101) | (869-019-00002-0) | 17.00 | [1] Jan. 1, 1993 |
| 4 | (869-019-00003-8) | 5.50 | Jan. 1, 1993 |
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

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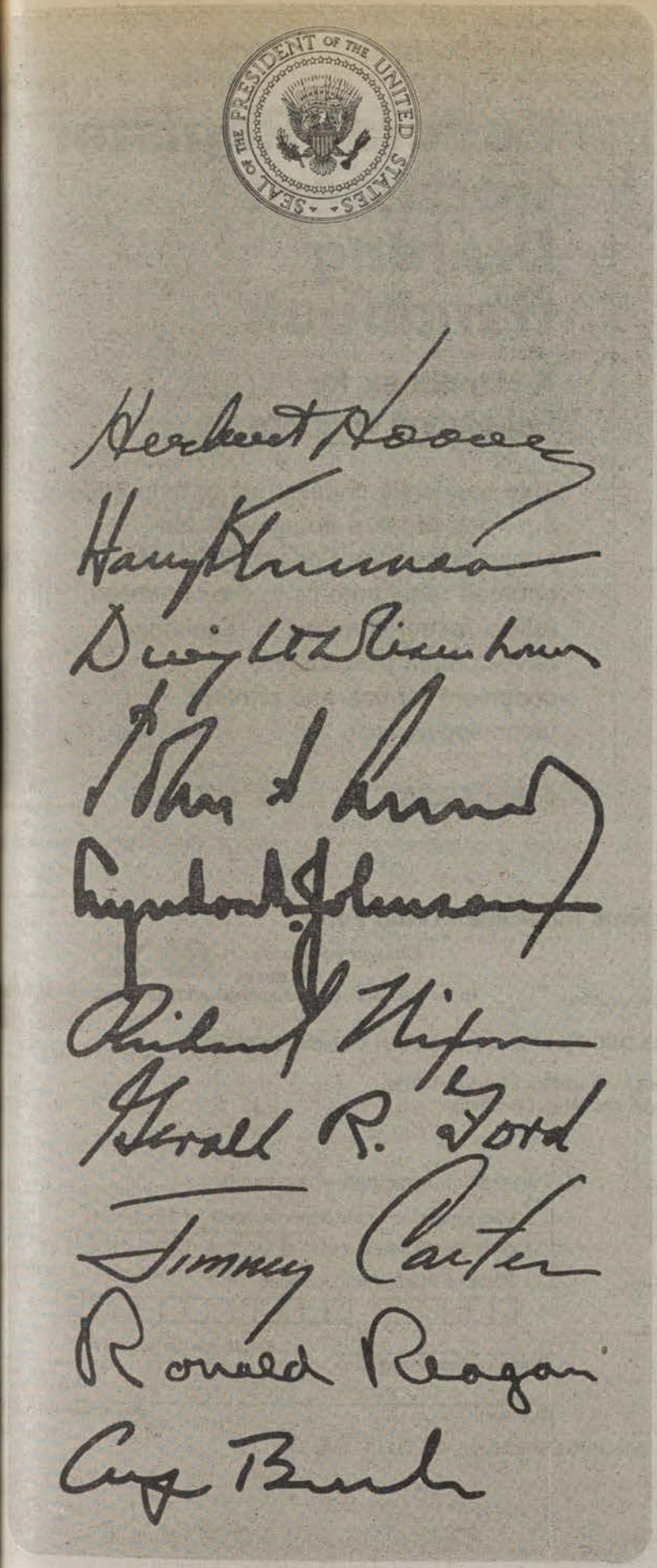


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